1989 August 14

(BOYADJIS J)

IN THE MATTER OF AN APPLICATION BY OR ON BEHALF OF YANNAKIS P ELLINAS FOR AN APPLICATION FOR ORDERS OF CERTIORARI AND/OR PROHIBITION

AND

IN THE MATTER OF AN ORDER OF THE DISTRICT COURT OF LIMASSOL DATED 13 1 1989 IN CRIMINAL CASE No 32/89

(Application No 19/89)

Prerogative Orders — Prohibition — It lies not only in cases of an excess or absence of Jurisdiction of an inferior Court or of breach of the rules of natural justice, but also in case where the proceedings before such Court are in contravention of the laws of the land — Therefore, there is jurisdiction to prohibit an Assize Court from trying an accused person upon an information by the Attorney-General valid under s 107 of The Criminal Procedure Law, Cap 155, if the right of the accused safeguarded by Art 30 2 of the Constitutional shall be thereby infringed

Constitutional Law — Right to have a criminal charge determined within a «reasonable time» — When such time begins to run

The European Convention for the Protection of Human Rights, ratified by Law 39/62 — Right to have a criminal charge determined within a «reasonable time» — The relevant period begins with the day when a person is «charged» — What is meant by «charged» — It may be defined as «the official notification given to an individual by the completent authority of an allegation that he has committed an offence» (Eckle Case, infra) — This definition corresponds to the test whether «the situation of the suspect has been substantially affected» (Dewer, case infra)

Constitutional Law — Right to have a criminal charge determined within reasonable time — Constitution, Art 30 2 — The question of «reasonable time» must be considered in relation to the particular circumstances of the proceedings concerned, and, in particular, with regard to (a) the complexity of the case as a whole, (b) the manner in which the case has been handled by the judicial authorities and the Courts, and (c) applicant's own conduct — None of such elements is conclusive by itself

The European Convention for the Protection of Human Rights, ratified by Law 32/69 — Right to have a criminal charge determined within reasonable time — Article 6.2 — The question of «reasonable time» must be considered in relation to the particular circumstances of the proceedings concerned, and in particular, with regard to (a) the complexity of the case as a whole, (b) the manner in which the case has been handled by the judicial authorities and the Courts, and (c) applicant's own conduct — None of such elements is conclusive by itself.

The facts of this case are very briefly the following: On 8.12.84 one of the partners in the firm Lightning Transport accused the applicant to the police that he had stolen large sums of money from the partnership. The applicant was one of the partners, the cashier and secretary of the partnership, having in his possession the partnership books and accounts.

On 19.12.84 the applicant was arrested. On the same day the Police seized the partnership books of accounts, receipts etc. Four days later the applicant was released.

The Police, who do not have their own accountants, employed a private firm to examine such books etc. The examination commenced in May 1985 and ended on 2.7.86. It was carried out by two accountants on an almost daily basis.

The two accountants were faced with many difficulties. The applicant was uncooperative. Following the report of the two accountants the applicant was formally charged by the police (4.7.86) for stealing £52,343.

The said partnership had 45% of the shares in another company L.U.B. Ltd. Efstathios Kyriakou and Sons Ltd., had 10% and Andreas Kyriakou, as shareholder and director of the latter, together with the applicant, had 6%.

The relevant files of the Police contained statements from witnesses, documents and report totalling thousands of pages and concerned 109 complainants. They were sent to the Office of the Attorney-General for advice. On several occasions the files were returned to the police for supplementary investigations. Finally (10.9.87) the police were instructed to bring a criminal case in respect of the aforesaid amount only against the company Efstathios Kyriacou and Sons Ltd. and Andreas E. Kyriacou.

After their arraignment Efstathios Kyriacou and Sons Ltd. and Andreas Efstathiou Kyriacou wrote a letter through their advocate, dated 26th November, 1987 to Senior Counsel of the Republic in the

Attorney-General's Office, admitting for the first time that the charges brought against them refer to sums which they had collected on behalf of Lightning Transport. In the same letter they put forward the allegation that they paid over those sums to the applicant and offered to co-operate and hand over to the Police their books for 5 examination and evidence verifying their allegation.

The case against the applicant was thus re-opened. The books were handed over to the same accountants. The examination was completed on 13.10.88. By the end of December, 1988 the new investigations were completed on the 13th January, 1989, the 10 applicant was committed for trial by the Assize Court next sitting in Limassol on 16th January, 1989. The formal charge of the applicant and his answer thereto dated 4th July, 1986, referred to earlier, was one of the documents placed before the committing judge for his consideration. Pursuant to such committal the Attorney-General 15 filed on 23rd January, 1989, the information under section 107 of Cap. 155 containing 36 counts charging the applicant with stealing several amounts totalling about £30,000.- which he had allegedly received for and on behalf of Lightning Transport on several occassions between 8th March, 1980 and 7th September, 1983. This 20 amount is part of the aforesaid larger sum of £52,343.- which covered the period between 1975 and 1983.

The applicant now applies for an order of Certiorari to remove into the Supreme Court for the purpose of its being quashed the committal of the applicant by the District Court of Limassol (H.H. 25 Pamballis D.J.) for trial before the Assize Court of Limassol for a number of criminal offences and/or for an order of Prohibition prohibiting the Assize Court of Limassol from proceeding to arraign and/or to try the applicant in Criminal Case No. 32/89 on the basis of the said committal made by the District Court of Limassol on 13th 30 January 1989 and/or on the Information dated 19th January, 1989 filed by the Attorney-General on the basis and/or in consequence of the said committal.

The main question in this case is whether the applicant's right safeguarded by Art. 30.2 of the Constitution and Art. 6.2 of the 35 European Convention for the Protection of Human Rights to have the criminal charge against him determined within a reasonable time has been violated.

In the light of the decision in *Ellinas v. The Republic* (1989) 1 C.L.R. 17 (Full Bench) the applicant did not insist on the issue of certiorari. 40

The question as to the Jurisdiction to issue prohibition was resolved on the basis of the principles appearing in the first of the above headnotes.

In the light of the principles summarized in the second and third of the hereinabove headnotes the Court held that time began to run as from the day when the applicant was first arrested, i.e. 19.12.84. Therefore, the total length of the proceedings was four years and 15 days (The period ended by the filing of the Criminal case on 3.1.89).

The criteria applicable in order to determine whether the time was reasonable or not appear in the fourth and fifth of the hereinabove headnotes, As regards in particular the effect of the conduct of the applicant, if within his procedural rights, the Court cited two cases, i.e. Huber's case and Venturar's case, wherefrom it appears that applicant's conduct cannot deprive him of his right under Art. 6.1 of the Convention, but it must be borne in mind when the question of violation of such right is being examined. The Court further dismissed two submissions of the applicant, namely that the delay is this case should be attributed to the inefficient way the Police handled the matter (failure to obtain information or call for the books of Efstathios Kyriacou and Sons Ltd.) and to the failure of the police to employ themselves the accountants to carry out the investigation. The Court dismissed the first submission because after the fruitless interrogations of Andreas E. Kyriacou by the Police regarding the money which the evidence in Police hands showed that he had stolen, the Police had no reason whatsoegver to continue their investigation with a view of discovering evidence against the applicant that would clear Andreas E. Kyriacou and his company. As regards the second submission the Court observed that the two accountants would still need the same time, even if they had been employed by the Police.

Finally the Court, having held that the period that elapsed in this case is such as to cast the onus of proof on the Republic decided that, in the light of all the circumstances, the applicant's right under Art. 30.2 of the Constitution and Art. 6.1 of the Convention has not been violated.

Application dismissed.
No order as to costs.

Cases referred to:

Ellinas v. The Republic (1989) 1 C.L.R. 17;

Christofi and Others v. Iacovidou (1986) 1 C.L.R. 236;

In re Michael (1989) 1 C.L.R. 412;

Kouppis v. Republic (1977) 2 C.L.R. 361;

Application No. 2612/65, Reingeisen v. Austria Yearbook XI p.268 (315);

Op. Com. 27 May 1966 Neumeister Case Publ., Court B Vol. 6 p. 81;

Op. Com. 3 February 1970 Soltikow Case, YB XIV p. 869;

Op. Com. 8 February 1973 Huber Case, D & R 2 p.11; 5

Eckle Case Public Court A Vol. 51 pp. 33-34;

Appication No. 9132/80 Eric Neubeck v. The Federal Republic of Germany, D. & R. 41;

Ventura Case, D. & R. 23 p.5;

Application. 10

Application for an order as Certiorari to remove into the Supreme Court for the purpose of quashing the committal of the applicant by the District Court of Limassol for trial before the Assize Court and/or for an order of prohibition prohibiting the Assize Court from proceeding to arraign and/or try the applicant in 15 Criminal Case No. 32/89 on the basis of the said committal.

M. Meletiou for G. Cacoyannis and M. Koukkidou (Miss), for the applicant.

Cl. Antoniades, Senior Counsel of the Republic, for the respondent. 20

Cur. adv. vult.

BOYADJIS J. read the following judgment. Pursuant to the leave granted by this Court of 15th February, 1989, the applicant now applies for an order of Certiorari to remove into the Supreme Court for the purpose of its being quashed the committal of the 25 applicant by the District Court of Limassol (H.H. C. Pamballis, D.J.) for trial before the Assize Court of Limassol for a number of criminal offences and/or for an order of Prohibition prohibiting the Assize Court of Limassol from proceeding to arraign and/or to try the applicant in Criminal Case No. 32/89 on the basis of the said 30 committal made by the District Court of Limassol on 13th January, 1989 and/or on the Information dated 19th January, 1989, filed by the Attorney-General on the basis and/or in consequence of the said committal.

The application is based on the following grounds:

«(a) The said committal is null and void and of no effect, its invalidity being on error of law apparent on the face of the record and/or as it was made in excess of the Court's jurisdiction or power in that the prosecution of the Applicant in the circumstances of this case is unconstitutional as *infringing Articles 30.2, 33 and 35 of the Constitution and/or* Article 6.1 of the European convention on Human Rights ratified by Law 39/1962, and/or

(b) The long delay in the prosecution and trial of the Applicant in the said Criminal Case No. 32/89 is an unreasonable delay and infringes the Applicant's said constitutional right and his right under the European Convention on Human Rights (and Law 39/1962) to have all the criminal charges against him determined within a reasonable time, and/or

(c) The said prosecution of the Applicant and/or the said Information amounts, in the circumstances, to an abuse of the process of the Court and therefore the committal of the Applicant for trial before the Assize Court of Limassol is null and void and of no effect as being an error of law apparent on *the face of the record and/or as having been made in excess of* the Court's jurisdiction or power; and/or

(d) The Assize Court of Limassol will proceed to try the Applicant on the basis of the said committal and the Information filed in consequence thereof unless prohibited from doing so by an Order of Prohibition».

The facts upon which the applicant relies are set forth in two affidavits deposed by his wife Mary Ellinas, of Limassol. The first of these affidavits was sworn on 18th February, 1989, and the second affidavit was sworn on 29th March, 1989.

The Attorney-General of the Republic opposes the application. The facts relied in opposition are set forth in the affidavits deposed by Police Inspector Stelios Solomou, attached to the Criminal Investigation Department of Limassol Police, who was actively involved in the investigation into the alleged offences against the applicant. The first of these affidavits was sworn on 24th March, 1989 and the second affidavit was sworn on 10th April, 1989.

A large number of documentary exhibits, totalling several hundred pages, are attached to the four affidavits sworn by the two affiants.

From the manner in which learned counsel on both sides have argued the case, it was made clear in the outset that the issue was 5 confined to whether or not the circumstances of the case disclose a violation of Article 30.2 of the Constitution and that both counsel took it for granted that, in case such a violation is disclosed, applicant is entitled to the particular remedies applied for, i.e. to the exercise by this Court of its exclusive jurisdiction under Article 10 155.4 of the Constitution to issue the prerogative orders of certiorari and prohibition. The issue whether the Court has jurisdiction, in the circumstances of this case, to issue the orders of Certiorari and/or Prohibition, was neither raised in the notice of opposition nor was it argued before me. 15

On the conclusion of the hearing, the judgment of the Court on the issue confined as aforesaid was reserved. At the instance of the Court the case was later re-opened and counsel were invited to address me whether, in the light of the decision of the Full Bench in Civil Appeals Nos. 7648 and 7649*, I have jurisdiction to issue 20 either of the orders applied for. In the aforesaid Civil Appeals the Full Bench decided that, upon the filing of the information by the Attorney-General, a committal order exhausts its force; it merges in the information and its validity cannot thereafter be reviewed by way of certiorari. Regarding the jurisdiction to review by way of 25 certiorari the decision of the Attorney-General to file an information before the Assize Court, it was held that, provided the Attorney-General heeds the procedural requisites set down in section 107 of the Criminal Procedure Law, Cap. 155, his action is not subject to judicial review by way of certiorari and that section 30 108 of the Law makes the Attorney-General the arbiter of the content of the information.

Both learned counsel expressed their views on the aforementioned issue of jurisdiction raised by the Court. Mr. 35 Cacoyannis for the applicant very rightly conceded that , in the light of the aforementioned Full Bench decision and in view of the fact that before the filing of the present application for review the information had been filed on the basis of the impugned committal order, the Court has no power to accede to his application and 40

* *Ellinas v. Republic* (1989) 1 C.L.R 17.

issue the order of certiorari removing into the Supreme Court for the purpose of its being quashed the committal of the applicant by the District Court of Limassol for trial before the Assize Court. He argued, however, that the Court has jurisdiction to accede to that part of his application whereby an order of prohibition is sought prohibiting the Assize Court of Limassol from proceeding to arraign and/or to try the applicant in Criminal Case No. 32/89 on the basis of the information filed by the Attorney-General on 19th January, 1989. The learned Deputy Attorney-General has, on the other hand, expressed the view that an order of prohibition lies only in cases where excess or absence of jurisdiction of an inferior tribunal or breach of the Rules of natural justice are being shown to exist. In support of his proposition he referred the Court to Halsbury's Laws of England, 4th Edition, Vol. 1, para. 130; and that, the allegation put forward by the applicant in the present case that the delay in prosecuting him amounts to an infringement of his fundamental right under Article 30.2 of the Constitution, does not fall under either of the aforesaid two grounds to which the remedy of prohibition is confined. The learned Deputy Attorney-General added that, though he is very much in favour of the existence of a remedy against a prosecution made in circumstances which infringe Article 30.2 of the Constitution, the only remedy available to the applicant in the present case is, perhaps, to raise the matter of unreasonable delay before the Assize Court which is in a better position than this Court to enquire more fully into the complicated factual matters involved in such enquiry.

Learned counsel put forward several other arguments for and against their respective submissions on the issue of jurisdiction to which, however, I need not refer as I am convinced that the matter is adequately covered by authority and that for the reasons which I shall shortly explain this Court has jurisdiction to examine the application on its merits and issue an order of prohibition if satisfied that in the particular circumstances of this case, the trial of the applicant by the Assize Court of Limassol on the information filed in Case No. 32/89 will result in itself to an infringement of the right of the applicant safeguarded in Article 30.2 of the Constitution.

The grounds upon which the order of prohibition lies are not confined to those suggested by the Republic. In *Manolis Christofi and Others v. Nina Iacovidou*, (1986) 1 C.L.R. 236 delivering the judgment of the Full Bench, Stylianides, J., said at p. 246 the following:-

«An order of prohibition is an order directed to an inferior Court which forbids that Court to continue proceedings therein in excess of jurisdiction or in contravention of the Laws of the land».

In Re Michael (1989) 1 C.L.R. 412 at p 413 the same Judge stated that: 5

«Prohibition is an order issued out of this Court directed to an inferior Court, which forbids that Court to continue proceedings therein in excess of its jurisdiction, or in contravention of the laws of the land, or in departure from the rules of natural justice». 10

Though it is true that the application could and should, in the light of the decision in Civil Appeals No. 7648 and 7649* (supra) be drafted in a different form, i.e. in a way that would not render the validity of the committal order the cornerstone of the application, in its present form the application raises sufficiently as a distinct ground for which the order of prohibition is sought the allegation of delay in prosecuting the applicant in Criminal Case No. 32/89, and also includes a distinct prayer for an order of prohibition, a remedy itself distinct and independent from the remedy of certiorari. Properly viewed, the application reveals that, apart from any attack on the validity of the information or on the right of the Attorney-General to file it, the applicant alleges therein that his trial before the Assize Court of Limassol upon which he is being put upon the information filed by the Attorney-General in Criminal Case No. 32/89 infringes the Constitution which is the supreme law of the land as well as the European Convention on Human Rights which is part of our law. Unlike the present case, where it may be said that what the applicant in substance seeks is to prevent the commencent of the criminal trial against him, the applicant in Civil Appeals Nos. 7648 and 7649 (supra) was seeking judicial review of the information in view of its particular contents allegedly charging offences not included in the depositions. The two cases are in this respect clearly distinguishable and the decision of the Full Bench in Civil Appeals Nos. 7648 and 7649 (supra) does not deprive the Court from its jurisdiction to prohibit an Assize Court from proceeding to try an accused person upon an information valid under section 107 of Cap. 155, filed by the Attorney-General, if the right of the accused safeguarded in Article 30.2 of the Constitution shall be thereby infringed. 15 20 25 30 35 40

* (1989) 1 C.L.R. 17.

Having thus resolved the issue of jurisdiction, I shall now proceed to examine the application on its merits. As I have earlier stated, the question that falls to be determined is whether or not the facts of the case disclose a violation of Article 30.2 of the
5 Constitution, which provides that «in the determination of ... any criminal charge against him, every person is entitled to a .... hearing within a reasonable time ....». Article 30.2 embodies one of the fundamental rights and liberties set out in Part II of the Constitution whose efficient application, the legislative, executive
10 and judicial authorities of the Republic are bound to secure under Article 35 thereof. The right of an accused person to the determination of the criminal charge against him «within a reasonably time» is also safeguarded by Article 6(1) of the European Convention on Human Rights which has been ratified
15 by the European Convention on Human Rights (Ratification) Law, 1962 (Law 39/62), and has thus acquired, under Article 169.3 of the Constitution, «superior force to any municipal law». Article 30.2 of the Constitution copies the corresponding provision in Article 6(1) of the Convention which, in fact, served as
20 the model of Part II of our Constitution. In view of this we have always derived useful guidance in the interpretation and application of this part of the Constitution from the interpretation and mode of application of the corresponding provisions of the Convention by the European Commission of Human Rights and
25 by the European Court of Human Rights whose decisions and reports are of valuable assistance to us. See in this respect, inter alia, *Kyriakos Nicola Kouppis v. Republic* (1977) 2 C.L.R. 361.

The precise aim of both provisions, i.e. Article 30.2 of the Constitution and Article 6(1) of the Convention, in criminal
30 matters is to ensure that accused persons do not have to lie under a charge for too long and that the charge is determined as soon as it is reasonably possible.

The Commission has held that the circumstances of each case must be taken into consideration in judging whether proceedings
35 are of reasonable length; in other words, the reasonableness of the length of the proceedings must not be assessed in the abstract but in the light of the particular circumstances of the case concerned: Decision as to to the Admissibility of Application No. 2614/65, *Reingeisen v. Austria*, Yearbook XI, p.268 (315). It becomes,
40 therefore, pertinent to refer at some length to the circumstances of the present case as revealed in the affidavits filed by both sides and the documents attached thereto. They are as follows:

1. In June 1973 numerous bus owners formed the «Lightning Transport» partnership, the object of which was to carry passengers to and from the British Military Bases of Episkopi and Akrotiri and to the English Schools of Limassol and Berengaria. The partnership carried on its business and though it has not officially been dissolved, it has not carried any work since June 1983. The applicant was a major partner in the partnership. He was also its secretary and cashier. The books of accounts of the partnership were in his custody and entries therein were made by an employee under his supervision. Four brothers, namely, Panikkos, Georghios, Spyros and Evripides Michael were amongst the partners of the aforesaid partnership. 5 10

2. At about the same time Lightning Transport together with Efstathios Kyriacou & Sons Ltd. and five other Turkish Cypriot persons or firms in the transport business, with the object of avoiding competition between them, formed the company Lion United Buses Ltd. (hereinafter referred to as L.U.B. Ltd.) for the purpose of contracting business with the British Military Authorities which would then be distributed for performance between its shareholders in proportion to their respective share in the company. The company would then pay over to its shareholders all money received by it, in proportion to the work actually performed by each shareholder, after deducting 5% commission to cover its administration expenses. 15 20

The shares in L.U.B. Ltd. were held by Lightning Transport 45%, Efstathios Kyriacou & Sons Ltd. 10%, and the Turkish Cypriot persons and firms the remaining 45%. Following the Turkish invasion of Cyprus in 1974, the Turkish Cypriot partners left the free part of the island, except Mouzafir Muharrem who held 6% of the shares and who in 1975 sold his shares and buses to a joint venture formed by the applicant and Andreas E. Kyriacou. The latter was a shareholder and director in Efstathios Kyriacou and Sons Ltd. The applicant and Andreas Efstathiou Kyriacou were the directors of L.U.B. Ltd. 25 30

3. After the aforesaid developments in L.U.B. Ltd. in 1974 and 1975 the work contracted to be performed by L.U.B. Ltd. was distributed between and was performed by Lightning Transport, Efstathios Kyriacou & Sons Ltd. and the joint venture of applicant and Andreas E. Kyriacou. Each shareholder had the right to give part of the work allotted to him either to another shareholder or to strangers. L.U.B. Ltd., however, would still pay for such work its 35 40

shareholder to whom it had been allotted and the latter would pay his sub-contractor who had actually performed the work, after deducting a small percentage by way of commission. To cope with the volume of work allotted to it, Lightning Transport was using 5 not only the buses belonging to its partners but numerous buses belonging to other persons.

4. On 8th December, 1984, Panikkos Michael, one of the partners of Lightning Transport, sent a letter to the Limassol Divisional Police Commander charging the applicant with stealing 10 large sums of money belonging to the partnership and his partners and asked the Police to investigate into the matter. His letter was passed over to the C.I.D. On 18th December, 1984, the Police obtained a formal written statement from him and commenced their investigations in furtherance of which they arrested the 15 applicant on 19th December, 1984, on the strength of a judicial warrant. On the same day they seized from him all the books of accounts, receipts etc., belonging to Lightning Transport. He remained in police custody for four days and he was then released but his name was put on the stop list.

20 5. The Cyprus Police does not have its own accountants and auditors and the officers of the Accountant-General and Auditor-General of the Republic do not undertake to carry out the work of auditing of books necessary in cases of police investigations into complaints by citizens about defalcations and thefts in the private 25 business sector. With the approval of the Attorney-General the firm of authorized Accountants Petrides and Modinos were instructed by eleven bus owners, partners in Lightning Transport, including the aforesaid four Michael brothers, and agreed to carry out an examination of the books and records of the partnership 30 with the object of ascertaining whether all revenue earned or acrued to the partnership for the period from 18th June, 1973 to 18th June, 1983, were properly recorded and accounted for in the books of the partnership, and also to ascertain that all money paid to the owners were in fact payments for work done and that such 35 payments were properly authorized. Such examination which would be followed up by a report, would be carried out in accordance with the provisions of the Partnership Law, Cap. 116. Their fees would be determined on the basis of the time actually spent plus disbursements and would be paid by the aforesaid 40 eleven bus owners. Written instructions to the above effect were given to Petrides and Modinos on 30th March, 1985. The

examination was carried out in the Police station under the supervision of the Police. It commenced in about the middle of May 1985 and ended on 2nd July 1986. It was carried out on almost a day to day basis by two accountants.

6. Petrides and Modinos were faced with difficulties in their examination of the books emanating from the fact that: (a) the books were not kept in the proper and ordinary manner, entries in receipts were incomplete and cards describing the work done contained wrong entries; (b) there did not exist any system of internal audit or control; and (c) the persons responsible for the keeping of the books had refused to give the necessary information and explanations. The time consumed for the examination was thereby prolonged. The unco-operative attitude of the applicant on this matter appears in a report prepared by Pantelis Frydas, the Officer in charge of the C.I.D. of Limassol Police, as early as 29th April, 1986, where it is stated that the applicant had refused to accede to his requests to go to the Police Station and give certain explanations regarding several entries in the books which appeared to be unexplained. To complete the picture on this aspect of the case, reference should also be made to the following:

(i) On 21st January, 1986, counsel for the applicant wrote a letter to the Divisional Police Commander demanding the return to the applicant within seven days of the books and other documents seized by the Police on 19th December, 1984, in order to facilitate the preparation of his defence in a civil action which was filed against him by Michael brothers. The Divisional Police Commander replied by letter dated 1st February, 1986, stating that the books etc. were needed as exhibits in the case under investigation; they were in the safe custody of the police and the applicant could, at any time, inspect them and also get photocopies thereof. The applicant did not inspect the books and he did not take any photocopies thereof.

(ii) On 7th March, 1986, the Police interrogated the applicant on querries that had arisen as a result of the examination of the partnership's books until that time and obtained after cautioning him a written statement from him in the form of questions and answers. The applicant gave the same answer to all questions put to him by the Police. His answer was that he was not prepared to make any statement or to answer any question if he had not been given full opportunity to study the partnership's books and

documents in the hands of the Police and that this would necessitate his taking delivery from the Police of all such books and documents in order to study them with the help of his accountant. He added that he was protesting once more for the 5 fact that Police Inspector Stelios Solomou continued to be a member of the Police team that carried out the investigations. The applicant had earlier put forward the inaccurate allegation that Stelios Solomou was closely related to Panikkos Michael and was, therefore, prejudiced against him. On this matter, applicant's 10 counsel had sent to the Chief of Police a letter dated 21st February, 1986, followed by a telegram dated 27th February, 1986, stating that the applicant would not make any statement to the Police for as long as Stelios Solomou participates in the Police investigations against him.

15 7. On 2nd July, 1986, Petrides and Modinos delivered their report to the bus owners who had employed them and to the Police. The examination which they carried out revealed, inter alia, that during each of the years 1975 to 1983 inclusive, sums of money totalling £52,343.- was paid by Lightning Transport to bus 20 drivers for work carried out by them as sub-contractors of Efstathios Kyriacou & Sons Ltd. There was no entry in the books showing that the above sums which L.U.B. Ltd. had paid to Efstathios Kyriacou & Sons Ltd., was paid over by the latter company to Lightning Transport. The Police interrogated the 25 director of Efstathios Kyriacou & Sons Ltd., namely, Andreas E. Efstathiou, who was also a director of L.U.B. Ltd., regarding the whereabouts of this money, but he refused to give any answer or information. When interrogated, the applicant also refused to give any answer. On 2nd July 1986, the Police formally charged 30 Andreas E. Efsthathiou with stealing the amount of £52,343.- belonging to Lightning Transport and his answer to the formal charge was only that he did not admit it. On 4.7.1986 the applicant was also formally charged by the Police for stealing the same amount and his only answer to it was that he did not admit the 35 charge either.

8. On the basis of the findings set out in the report of Petrides and Modinos and of the investigations by the Police which were completed on 16th July, 1986, the Police prepared 114 criminal cases and on the same day, in accordance with the usual practice, 40 sent them together with all evidential material to the Attorney-General of the Republic for his consideration and advice. All those

cases concerned hundreds of transactions involving about half a million pounds that took place during the period between 19th September, 1973, and 18th June, 1983. The relevant files of the Police contained statements from witnesses, documents and reports totalling thousands of pages and concerned 109 complainants. There followed many meetings and consultations between the Police officers involved in the investigations and the Deputy Attorney-General and other lawyers in the Office of the Attorney-General. On several occasions the files were returned to the Police with instructions to carry out supplementary investigations and obtain supplementary statements on several aspects of the case. The final advice of the Deputy Attorney-General was given to the Limassol Police on 17th August, 1987. One of the cases in respect of which the Attorney-General had given them advice referred to the suggestion of the Police to file in Court a criminal case charging jointly the applicant and Andreas Efstathiou Kyriacou for stealing the aforesaid amount of £52,343.- belonging to Lightning Transport, in respect of which the applicant was formally charged on 4th July, 1986. The Deputy Attorney-General had adopted this suggestion. The Police suspected the applicant as an accomplice of Andreas Efstathiou Kyriacou, in view of his multiple capacities in the companies and firms involved in the performance of the contracts obtained from the British Military Authorities. On further consideration of the case, the learned Deputy Attorney-General gave new advice to the Police on 10th September, 1987. He thereby instructed the Police to file a criminal case in respect of the aforesaid amount only against the company Efstathios Kyriacou and Sons Ltd. and Andreas E. Kyriacou. The Deputy Attorney-General also expressed the view that the prosecution of the applicant in respect of that amount was not justified by the evidence then in their possession.

9. Following the last aforesaid advice, the Police filed against Efstathios Kyriacou & Sons Ltd. and Andreas E. Kyriacou Criminal Case No. 23861/87 following which they were both committed for trial before the Limassol Assizes.

10. Acting on the instructions of the Deputy Attorney-General dated 17th August, 1987, the Police filed against the applicant four different criminal cases, namely, Nos. 22444/87, 22445/87, 22446/87 and 23802/87, and on 5th February, 1988, the District Court of Limassol committed him for trial before the Assizes on all

four cases. We are not concerned, at present, with these cases. It suffices to say that: (i) they were all based on the report of Petrides and Modinos; (ii) the Attorney-General elected to file informations only in Cases Nos. 22446 and 23802; (iii) the applicant was
5 arraigned in the Limassol Assize Court in Case No. 22446/87 on 14th July, 1988, and was found guilty and sentenced to 18 months' imprisonment on 26th August, 1988; (iv) the applicant appealed against his conviction and after the conclusion of the hearing in the present application and pending the delivery of the present
10 judgment, the Supreme Court quashed his convition last July and he was released from prison; and (v) Case No. 23802/87 is still pending before the Limassol Assize Court.

11. After their arraignment in the Limassol Assize Court, the accused in Case No. 23861/87, i.e. Efstathios Kyriacou and Sons
15 Ltd. and Andreas Efstathiou Kyriacou, wrote a letter through their advocate, dated 26th November, 1987, to Mr. Cl. Antoniades, Senior Counsel of the Republic in the Attorney-General's Office, admitting for the first time that the charges brought against them refer to sums which they had collected on behalf of Lightning
20 Transport. In the same letter they put forward the allegation that they paid over those sums to the applicant and offered to co-operate and hand over to the Police their books for examination and evidence verifying their allegation. Upon that the case against them was adjourned and following some further communications
25 between counsel, the case against the applicant was re-opened and new investigations were commenced with a view of verifying the aforesaid allegations. The books of the company were handed over to Petrides and Modinos who carried out an examination thereof with the co-operation of the company's accountant. From
30 the information received from the examination of these books which started on 20th February, 1988, and was completed on 13th October, 1988, the need of further investigations emerged. New and/or supplementary statements from several persons were taken and the file was again sent to the Office of the Attorney-
35 General for his consideration and advice. On 7th November, 1988, the Deputy Attorney-General filed a nolle presequi in Case No. 23861/87. By the end of December 1988, the new investigations were completed and under the instructions from the office of the Attorney-General, Criminal Case No. 32/89 was filed
40 against the applicant on 3.1.1989. On 13th January, 1989, the applicant was committed for trial by the Assize Court next sitting in

Limassol on 16th January, 1989. The formal charge of the applicant and his answer thereto dated 4th July, 1986, referred to earlier, was one of the documents placed before the committing Judge for his consideration. Pursuant to such committal the Attorney-General filed on 23rd January, 1989, the information under section 109 of Cap. 155 containing 36 counts charging the applicant with stealing several amounts totalling about £30,000.- which he had allegedly received for and on behalf of Lightning Transport on several occasions between 8th March, 1980 and 7th September, 1983. This amount is part of the aforesaid larger sum of £52,343 which covered the period between 1975 and 1983. The trial of the applicant on the aforesaid information was stayed as a result of the present application and of the order of this Court made at the instance of the applicant staying the criminal proceedings against him pending the determination of this application.

The only point at issue at the present stage of the proceedings is the question whether or not the criminal charges against the applicant were determined «within a reasonable time» as required by Article 30.2 of the Constitution and Article 6(1) of the Convention, bearing in mind the fact that by the time when the applicant filed the present application his trial had not yet commenced. In order to give an answer to this question the Court must first determine the relevant period to be considered under the aforesaid articles, and it will then examine, having regard to the applicable criteria, whether this period has been reasonable in the particular circumstances of the case.

The parties are in dispute as to the period to be considered for the purposes of determining this application. Though they agree that this period ends on 3rd January, 1989, when the criminal prosecution now sought to be suppressed was initiated by the filing of Criminal Case No. 32/89 against the applicant, they disagree as to the starting point of the period.

The applicant alleges that the starting point of the relevant period is the 19th December, 1984, when he had been arrested and the partnership's books were seized from him, whereas the Republic alleges that Case No. 32/89 is not the offspring of the examination of those books which was completed on 2nd July, 1986, but of the later examination of the books of the company Efstathios Kyriacou & Sons Ltd. brought about as a result of the

letter by the latter's advocate to the Office of the Attorney-General dated 26th November, 1987 and, therefore, the starting point of the relevant period could not be earlier than the last aforesaid date.

5 The Court cannot follow the Republic's argument on this matter. Case No. 32/89 was partly the offspring of the examination of the partnership's books and partly the offspring of the information received by the Police on 26th November, 1987, and the investigations that were carried out as a result thereof. In 10 resolving this matter the Court also takes into account the fact that following the examination of the partnership's (Lightning Transport) books, the applicant was formally charged by the Police for stealing the amount referred to in Case No. 32/89 and that the formal charge and the applicant's answer thereto were 15 included in the evidential material submitted to the committing Judge upon which he relied to commit the applicant for trial by the Assize Court on the aforesaid case.

The question at what stage the period of reasonable time referred to in Article 6(1) begins, is a question of interpretation: 20 Op. Com. 27 May 1966, *Neumeister Case*, Publ. Court B, Vol. 6, p. 81. In a number of decisions the Commission held that the provisions of Article 6(1) are generally to be understood as implying that the relevant period begins with the day on which a person is charged; that in determining this regard must be had to 25 the particular case concerned; that on the one hand the word «charge» in the said Article cannot be construed in the terms of the domestic law of any of the Contracting States but must be interpreted independently; that on the other hand, it may be necessary to have regard to the whole system of criminal 30 procedure of the State concerned in order to interpret and thus delimit the notion of «charge» for the purpose of applying that notion to the facts of a particular case: Op. Com. 3 February 1970, *Soltikow Case*, YB XIV p. 869, and Op. Com. 8 February 1973, *Huber Case*, D & R 2, p.11.

35 In *Neumeister* Case (supra) the Commission held that the relevant stage is that at which the situation of the person concerned has been substantially affected as a result of the suspicion against him.

In *Eckle* Case where a search and seizure warrant was issued 40 against the applicants on 25th April, 1967, the Commission held

that the aforesaid date must be regarded as the starting point of the relevant period since such an encroachment upon their rights made it quite clear that the prosecution were resolved to institute criminal proceedings.

I should finally refer to the judgment of the European Court of Human Rights of 15th July 1982 in *Eckle Case*, Publ. Court A, Vol. 51, pp. 33-34, where it was stated that:- 5

«In criminal matters, the 'reasonable time' referred to in Article 6(1) begins to run as soon as a person is 'charged'. This may occur on a date prior to the case coming before the trial Court (see, for example, the *Deewer* Judgment of 27 February 1980, Series A, Vol. 35, p.222, para. 42), such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted of the date when preliminary investigations were opened (see the *Wemhoff* Judgment of 27 June 1968, Series A, Vol. 7, pp. 26-27, para. 19; the *Neumeister* Judgment of the same date, Series A, Vol. 8, p.41, para. 18, and the *Ringeisen* Judgment of 16 July 1971, Series A, Vol. 13, p. 45, para. 110). 'Charge' for the purposes of Article 6(1) may be defined as 'the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence', a definition that also corresponds to the test whether 'the situation of the (suspect) has been substantially affected' (see the above-mentioned *Deweer* Judgment, p.24, para. 46)» 10 15 20 25

Guided by the aforesaid caselaw of the European Commission and Court, I have decided to accept the suggestion of the applicant on this point and I rule that the starting point of the relevant period is the 19th December, 1984, when the applicant was arrested and his position was thus substantially affected as a result of the suspicion against him. 30

The Court, therefore, finds that the total length of the proceedings is four years and 15 days (from 19th December, 1984, until 3rd January, 1989).

The question whether the above length of the proceedings can be considered as reasonable must be determined having regard to the criteria which have been established for this purpose in the caselaw of the Commission and the European Court of Human Rights. This being the first Cyprus case, as far as I know, where the 35

matter has been raised in the form of an application under Article 155.4 of the Constitution, there is no Cyprus authority on any of the points in issue that has been published as yet. The principles developed by the European Court of Human Rights, particularly in its judgments of 27th June, 1968, in the *Wemhoff* and *Neumeister* Cases, and which have been summarized in the Commission's Report of 19th March, 1970, in the *Ringeisen* Case as confirmed in the European Courts Judgment of 16th July, 1971, in that case, may be shortly stated as follows:-

The question whether or not the applicant, in the determination of any criminal charge against him, has had a hearing within a reasonable time in accordance with Article 6(1) of the Convention, must be decided in relation to the particular circumstances of the proceedings concerned and, in particular, with regard to:

(1) the complexity of the case as a whole;

(2) the manner in which the case has been handled by the national judicial authorities and Courts; and

(3) the applicant's own conduct.

None of the above elements is conclusive in itself. They are factors in the case which might explain the length of the particular criminal proceedings concerned. It is, therefore, indispensable that each one of them should be examined separately and evaluated with a view to determining their contribution towards the length of the proceedings. In the end, however, the Commission must evaluate, in the light of all these factors together, the total period under examination in order to determine whether or not it was reasonable within the meaning of Article 6(1) of the Convention.

Regarding the complexity of the proceedings the Commission has held that the complexity and volume of the case can only be invoked is so far as it actualy contributed to the delays in the proceedings, and, in any case, it cannot be held against the applicant in so far as it was created by the judicial authorities themselves: Application No. 9132/80 *Eric Neubeck v. The Federal Republic of Germany*, D. & R. 41, p.13.

Regarding the applicant's own conduct there are two decisions of the Commission from which I have derived guidance and to which I must refer.

The first case is *Huber* Case, D. & R. 2, p.11, where in the decision of the Commission dated 8th February, 1973, we read the following:-

«However, before the Commission can express an opinion as to whether or not the period which was required to determine the criminal charges against the applicant was reasonable within the meaning of Article 6(1) of the Convention, it must examine the applicant's own conduct during the various stages of the proceedings against him, as it is alleged by the respondent Government that the principal cause for any delays has been the applicant's own attitude which showed a lack of co-operation ....

A preliminary question arises in this context, namely to what extent the applicant's own conduct is at all relevant to the general issue here under consideration. The Commission observes that a distinction must be made between three forms of action in this context: firstly, the accused person's reliance on procedural rights which are available to him under the law; secondly, his failure to co-operate in the investigation and trial; and thirdly, any deliberate obstruction on his part.

It is generally accepted that an accused person is under no obligation to renounce his procedural rights or to co-operate in the criminal proceedings against him. However, there are two extreme views as to the question of what should be the effect of an unco-operative attitude on the part of an applicant with regard to his claim that the proceedings against him have lasted beyond a reasonable time. In one view such attitude is considered as constituting part of his right as a defendant with the consequence that his conduct is irrelevant with regard to his subsequent allegation that Article 6(1) has been violated by reason of the length of these proceedings. According to the other view, his failure to co-operate and, even more so any deliberate action on his part to obstruct the proceedings against him, would as a matter of equity have to be regarded as stopping the applicant from complaining under Article 6(1) of the Convention that the proceedings have been delayed beyond a reasonable time.

In the Commission's opinion, neither of these extreme views is convincing, the Commission considers that any unco-operative or even obstructive attitude on the part of the

applicant during the proceedings against him, although it cannot defeat his claim under Article 6(1) of the Convention, must nevertheless be taken into consideration in any examination of the question whether or not there has been a
5 violation of his right to a hearing within a reasonable time as guaranteed by that provision. This follows clearly from the necessity to establish the causes of any delays which is indispensable prerequisite to the examination of the question of violation».

10 The second case is *Ventura* Case, D. & R. 23, p.5, where we read the following in the Commission's report of 15th December, 1980:-

«Generally speaking, the applicant does not himself appear to have taken any steps which led directly to an undue delay in
15 the proceedings. It remains, however, to be decided whether, and to what extent, his failure to co-operate during the investigations may have affected the subsequent course of the proceedings. In this connection, the Commission points out that the applicant's refusal to co-operate during the
20 proceedings does not prevent him from invoking Article 6(1) of the Convention, but that it must be borne in mind when the question of a violation of the right to trial within a reasonable time, guaranteed by this provision, is being examined. This is clearly connected with the need to establish the causes of
25 delay, which is an essential preliminary to consideration of the question of a violation (*Huber* Report, para. 111).

In the present case, it has been established that the applicant did not mention Giannettin's name to the Investigating Judge until May 1973 (cf. para. 47).

30 Moreoever, he said nothing until 1975 about the proposal concerning his escape, allegedly made to him in 1973 (cf. para. 54). Both of these factors had some effect on the course of the investigation. In particular, the first led to the enquiries concerning the S.I.D. (Italian Secret Service).

35 Despite these revelations, the fact still remains that, during the first phase of the investigations before the Milan Investigating Judge, the applicant made no mention of certain facts which, if divulged earlier, would have rendered the investigation less difficult and thereby expedited the enquiries
40 and thus the proceedings.

It would seem, on the contrary, that the applicant adopted a defensive strategy, which involved waiting for the enquiries to develop before he revealed information which - as he must have known - would have led the Investigating Judge in Milan, and later Catanzaro, to order fresh enquiries ... 5

The Commission concludes, by a vote of 11 against 4, that Article 6(1) was not violated in respect of the duration of the criminal proceedings».

In view of the fact that in the instant case the overall duration of the proceedings appears to have exceeded the length which can, 10 as a general rule, be regarded as the «reasonable time» referred to in Article 6(1) of the Convention, it is for the respondent Republic to justify the delay.

In this respect the Government invokes the complexity of the case, the unco-operative attitude of the applicant and the 15 allegation that the Police authorities acted throughout the investigations with all possible despatch.

On the other hand, the applicant submits that the delay was wholly and/or mainly due to the following two factors for which the Republic is solely to blame, viz.: 20

(a) The Police were either unobservant or inefficient in their investigations.

(b) The Police should have themselves employed the private accountants to carry out the examination of the books of Lightning Transport. 25

Regarding factor (a) above, Mr. Cacoyannis has argued that the Police were inefficient because they always could and they ought to have approached the accountant of Efstathios Kyriacou and Sons Ltd. and ought to have asked him the simple question whether his employers had paid the money which they had 30 received from L.U.B. Ltd. either to the applicant or to Lightning Transport or to anybody else. The Police, counsel added, could also seize and examine the books of the company of Efstathios Kyriacou and Sons Ltd. and had they done so they could find evidence of the money being paid to the applicant for and on 35 account of Lightning Transport. Counsel further argued that such steps could have been taken immediately after the report of Petrides and Modinos of 2nd July, 1986, and it was due to their

negligence or inefficiency that they remained inactive after 2nd July, 1986, and until 17th November, 1987, when they received the letter from the advocate defending the accused in Criminal Case No. 23861/87, namely, Efstathios Kyriacou & Sons Ltd. and 5 Andreas E. Kyriacou.

The Court cannot agree with the arguments of the applicant on this matter. After the fruitless interrogations of Andreas E. Kyriacou by the Police regarding the money which the evidence then in Police hands showed that he had stolen, the Police had no reason 10 whatsoever to continue their investigation with a view of discovering evidence against the applicant that would clear Andreas E. Kyriacou and his company. They could reasonably expect that Andreas Efstathiou Kyriacou would have volunteered such evidence if he had it in his possession or if it was within his 15 power to do so. So, any inactivity of the Police on this matter before 17th November, 1987, was not due to their inefficiency or negligence.

Regarding factor (b) above, namely, the failure of the Police to employ themselves Petrides and Modinos, Mr. Cacoyannis was 20 unable to show in what respect the situation would have been different had the Police done so. Petrides and Modinos would have taken the same period of time to carry out the work whether they were in the first place employed by the Police or by the bus owners who had actually employed them. The suggestion of Mr. 25 Cacoyannis that the period of time consumed for the examination of the books would have been shorter if the fee payable to the accountants was not a per hour fee but was a lump sum for the whole work, is only a mere surmise and entirely unsubstantiated.

Considering the length of the relevant period in the present case 30 in the light of the criteria established by the caselaw of the Commission and the European Court of Human Rights, the Court is of opinion that the specific reasons invoked by the Republic sufficiently explain the delay in a manner which shows that the conduct of the Police authorities cannot be justifiably subjected to 35 any criticism. The Court is satisfied in this respect that the case under investigation was of unusual volume and complexity and further recalls the unco-operative attitude of the applicant. However disappointing it may be that more than four years have elapsed since the Police started investigating the case and the trial 40 of the applicant before the Assize Court was not able to

commence, the delay that has occurred cannot be attributed to the fault of the Republic.

The Court concludes that the circumstances in the present case do not disclose any appearance of a violation of either Article 6(1) of the Convention or of Article 30.2 of the Constitution. Neither do they disclose any abuse of the process of the Court in prosecuting the accused in Case No. 32/89.

The Application is, therefore, dismissed as regards both the relief sought in respect of certiorari and in respect of prohibition. No order as to costs.

Application dismissed.
No order as to costs.