

EUROPEAN COMMISSION OF HUMAN RIGHTS

FIRST CHAMBER

Application No. 31106/96

Stavros Marangos

against

Cyprus

REPORT OF THE COMMISSION

(adopted on 3 December 1997)

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I. INTRODUCTION

1. The following is an outline of the case as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

A. The application

2. The applicant is a Cypriot citizen, born in 1959 and resident in Strovolos, in Cyprus. He was represented before the Commission by Mr S. Drakos, an advocate practising in Nicosia.

3. The application is directed against Cyprus. The respondent Government were represented by their Agent, Mr Alecos Markides, the Attorney-General of the Republic of Cyprus.

4. The case concerns the continued prohibition of male homosexual conduct in private between adults in Cyprus. The applicant invokes Article 8 of the Convention.

B. The proceedings

5. The application was introduced on 11 March 1996 and registered on 22 April 1996.

6. On 14 October 1996 the Plenary Commission decided, pursuant to Rule 48 para. 2 (b) of its Rules of Procedure, to give notice of the application to the respondent Government and to invite the parties to submit written observations on the admissibility and merits of the applicant's complaint under Article 8 concerning the prohibition of male homosexual conduct in private between adults.

7. The Government's observations were submitted on 19 December 1996. The applicant replied on 17 February 1997.

8. On 20 May 1997 the Plenary Commission declared admissible the applicant's complaint under Article 8 of the Convention concerning prohibition of male homosexual conduct in private between adults. It declared inadmissible the remainder of the application. It also decided to transfer the case to the First Chamber.

9. The text of the Commission's decision on admissibility was sent to the parties on 2 June 1997 and they were invited to submit such further information or observations on the merits as they wished.

10. After declaring the case admissible, the Commission, acting in accordance with Article 28 para. 1 (b) of the Convention, also placed itself at the disposal of the parties with a view to securing a friendly settlement. In the light of the parties' reaction, the Commission now finds that there is no basis on which such a settlement can be effected.

C. The present Report

11. The present Report has been drawn up by the Commission (First Chamber) in pursuance of Article 31 of the Convention and after deliberations and votes, the following members being present:

Mrs J. LIDDY, President  
MM M.P. PELLONPÄÄ  
E. BUSUTTIL  
A. WEITZEL  
C.L. ROZAKIS  
L. LOUCAIDES  
B. MARXER  
B. CONFORTI  
N. BRATZA  
I. BÉKÉS  
G. RESS  
A. PERENIC  
C. BÎRSAN  
K. HERNDL

M. VILA AMIGÓ  
Mrs M. HION  
Mr R. NICOLINI

12. The text of this Report was adopted on 3 December 1997 by the Commission and is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with Article 31 para. 2 of the Convention.

13. The purpose of the Report, pursuant to Article 31 of the Convention, is:

- (i) to establish the facts, and
- (ii) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

14. The Commission's decision on the admissibility of the application is annexed hereto.

15. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

## II. ESTABLISHMENT OF THE FACTS

### A. The particular circumstances of the case

16. The applicant is a homosexual. He states that he finds it difficult to live in Cyprus because certain homosexual acts continue to be a criminal offence.

### B. Relevant domestic law

17. The Criminal Code of Cyprus provides as follows:

#### Section 171

"Any person who -

- (a) has carnal knowledge of any person against the order of nature; or
- (b) permits a male person to have carnal knowledge of him against the order of nature, is guilty of a felony and is liable to imprisonment for five years."

#### Section 172

"Any person who with violence commits either of the offences specified in the last preceding Section is guilty of a felony and liable to imprisonment for fourteen years."

#### Section 173

"Any person who attempts to commit either of the offences specified in Section 171 is guilty of a felony and is liable to imprisonment for three years, and if the attempt is accompanied with violence he is liable to imprisonment for seven years."

## III. OPINION OF THE COMMISSION

### A. Complaint declared admissible

18. The Commission has declared admissible the applicant's complaint that the criminal prohibition of male homosexual conduct in private between adults amounts to an unjustified interference with his right

to respect for his private life.

B. Point at issue

19. The only point at issue is whether there has been a violation of Article 8 (Art. 8) of the Convention.

C. As regards Article 8 (Art. 8) of the Convention

20. Article 8 (Art. 8) of the Convention provides as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

21. The respondent Government refer to the *Modinos v. Cyprus* judgment of 22 April 1993 (Eur. Court HR, Series A no. 259) and accept that the continued existence on the statute book of the prohibition of homosexual conduct in private between adults gives rise to an interference with the applicant's right to respect for his private life under Article 8 para. 1 (Art. 8-1) of the Convention, notwithstanding the fact that the applicant has never been charged and prosecuted under the relevant provisions of the Criminal Code.

22. The Commission recalls that in its *Modinos v. Cyprus* judgment of 22 April 1993 the European Court of Human Rights found that the prohibition of male homosexual conduct in private between adults continuously and directly affected the private life of the applicant in that case, who was a homosexual, and gave rise to a violation of Article 8 (Art. 8) of the Convention.

23. The Commission notes that the applicant is a homosexual and that male homosexual conduct in private between adults continues to be a criminal offence in Cyprus. It follows that the same conclusion as in the *Modinos v. Cyprus* case must be reached and that the violation of Article 8 (Art. 8) of the Convention found by the Court continues to exist.

CONCLUSION

24. The Commission concludes, unanimously, that there has been a violation of Article 8 (Art. 8) of the Convention.

M.F. BUQUICCHIO  
Secretary  
to the First Chamber

J. LIDDY  
President  
of the First Chamber