

Litigation - Cyprus

Declaratory relief by Cyprus courts

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Negative declaratory orders

Comment

In *Compania Naviera Iris SA v Andrenal Shipping Company Ltd*,⁽¹⁾ the Supreme Court recently reaffirmed the power of the courts to issue declaratory orders in accordance with Article 41 of the Administration of Justice Law.⁽²⁾ The case concerned the filing of an action by various single ship companies seeking declaratory orders to the effect that they were the owners of the relevant vessels, which was disputed by the defendant companies.

As the Supreme Court noted in its judgment, the principles that regulate the issuance of a declaratory order in the absence of a claim for special or ancillary remedy are summarised in the Annual Practice 1960 as follows:

"Construction of Rule: The validity of the Rule was unsuccessfully attacked in Guaranty Trust Co. of New York v. Hannay [1915] [1653]2 K.B. 536. That case may be taken to establish the proposition that the jurisdiction to make a declaration under the Rule is not confined to cases in which the plaintiff has a complete and subsisting cause of action apart from the Rule. But where specific relief, other than a declaration, is not claimed, the jurisdiction is one which should be exercised with great caution; and a declaration ought not to be made upon a preliminary point in an action brought for that purpose, where the substantive relief must be claimed in another action..... Where a declaration can be made, it is a matter of discretion (ib.). The plaintiff must be entitled to relief in the fullest meaning of the word, but the relief claimed must be something which it would not be unlawful, or unconstitutional, or inequitable for the Court to grant, or contrary to the accepted principles upon which the Court exercises its jurisdiction A claim for a declaration only, not followed by a claim for consequential relief, will be carefully watched; but properly employed it is useful (Gray v. Spyer [1922] 2 Ch. 22, 27, C.A.). Thus a declaration will not be made against a person who has asserted no right nor formulated any specific claim (Re Clay [1919] 1 Ch. 66), and only of a legal right (Nixon v. A.G. [1930] 1 Ch. 574), not of the plaintiff's right where the declaration is merely asked as a foundation for substantive relief which fails (Earl of Dysart v. Hammerton [1914] 1 Ch. 822, and see ib., [1916] 1 A.C. p.65); nor will a declaration be made merely to enable the plaintiff to utilise it in a foreign action (see Guaranty Trust of New York v. Hannay [1915] 2 K.B. 575) ".

While reaffirming this power, the Supreme Court made clear that the courts should exercise caution when considering actions that seek only a declaratory order without another ancillary remedy.

Negative declaratory orders

As noted in *The Declaratory Judgment*, by Zamir and Woolf:

"Plaintiffs will generally seek negative declarations where no right of theirs has yet been infringed and, therefore, coercive relief is usually unobtainable. They may, however, have been confronted with a demand or threatened action. An authoritative declaration, dispelling or affirming the claim of the defendant, may then be useful and desirable as a guide for the future conduct of the parties...In many cases negative declarations were sought by plaintiffs anticipating actions against them, and the propriety of the proceedings was generally not questioned. It seems that the courts, far from objecting on principle to such proceedings, examine in each case which is the more appropriate method, that is, whether the plaintiff should be left to defend himself if and when he is sued or be allowed to forestall such a suit by declaratory proceedings. In this process the court will weigh the interest of the plaintiff against that of the defendant to see which one turns the scale."

Until 2000 the prevailing attitude to negative declaratory injunctions was that the discretion in favour of making a negative declaration was an unusual remedy which would rarely be exercised. In *Gasto Shipping Company Ltd v Mineag SQM Africa (PTY) Ltd*,⁽³⁾ the Supreme Court of Cyprus decided as follows, on the basis of the relevant English case law of the time:

- The issuance of negative declarations is appropriate only in exceptional circumstances.
- Claims for negative declarations must be closely scrutinised and subject to vigorous examination.
- The applicant must show that a clear benefit will arise from the issuance of a negative declaration.
- The court must be persuaded that it would not be possible fully to award justice unless a negative declaration were issued.

The applicable law in the dispute is one of the factors to be taken into consideration, and must be considered alongside all other factors in deciding whether it is appropriate for the court to issue a negative declaration.

Comment

Courts in Cyprus have the discretionary power to issue declaratory orders and are prepared to exercise that power, but as indicated by the case law, each application must be carefully examined on its own facts, especially if no other remedy is requested or if a negative declaration is requested.

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Endnotes

⁽¹⁾ Admiralty Action 13/07 (January 13 2014).

⁽²⁾ Law 14/1960.

⁽³⁾ (1999) 1 CLR 1634.

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