

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 35524/06

by Michalis ARTEMI and Panos GREGORY

against Cyprus, Austria, Belgium, the Czech Republic, Denmark, Estonia,
Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania,
Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia
and Sweden

The European Court of Human Rights (First Section), sitting on
30 September 2010 as a Chamber composed of:

Christos Rozakis, *President*,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having regard to the above application lodged on 22 August 2006,

Having regard to the agreement of the parties to the appointment of a
common interest judge (Judge Spielmann) pursuant to Rule 30 of the Rules
of Court,

Having regard to the observations submitted by the respondent
Governments,

Having regard to the comments submitted by the European Commission,

Having deliberated, decides as follows:

THE FACTS

The applicants, Michalis Artemi and Panos Gregory, are Cypriot nationals of Greek-Cypriot origin who were born in 1911 and 1965 respectively and live in Croydon. The second applicant represented both applicants before the Court.

The facts of the case, as submitted by the applicants, may be summarised as follows.

The first applicant used to live in the village of Tymbou in northern Cyprus until he had to flee in August 1974 following the invasion by Turkish Military Forces. The second applicant is the first applicant's grandson. The applicants stated that ever since the events of 1974 they have been continuously prevented by the Turkish Military Forces from returning to their village and residing there. Their application was lodged against 22 Member States in their capacity as members of the European Union (hereinafter "EU") and in light of their ratification of Protocol No. 4 to the Convention.

Following the ratification and entry into force of the Treaty of Accession of 2003, the applicants sought to challenge the restrictions on their freedom of movement and residence in the northern part of Cyprus before various EU institutions.

The applicants' petition to the European Parliament of an unspecified date was forwarded to the Committee on Foreign Affairs and the Subcommittee on Human Rights, which considered the matter. The applicants were informed on 28 April 2004 that consideration of their petition had been concluded.

By letters of 31 May and 7 July 2006 to the European Commission the applicants requested that the European Commission take diplomatic, economic, judicial or other measures within its power to assist the implementation of their right to free movement and residence in the northern part of Cyprus. They pointed out that on the Commission's website it was noted that "the suspension has territorial effect, but does not concern the personal rights of Turkish Cypriots as EU citizens".

On 27 July 2006 the European Commission replied that, as stressed in the Protocol, the EU reaffirmed its commitment to a comprehensive settlement of the Cyprus problem and strongly supported the efforts of the United Nations Secretary General to that end. However, the Protocol also suspended the application of Community legislation on free movement of persons. The reference to the personal rights of Turkish Cypriots not being suspended reflected the fact that Turkish Cypriots were Union citizens and could exercise their Community rights everywhere where Community legislation applied. This did not mean that anyone could rely on Community legislation in the north of Cyprus where its application had been suspended.

Moreover, it was pointed out that the Commission could not intervene in this particular case with any legal or judicial means.

By letter of 27 June 2006 the applicants complained to the Council of the European Union that the effect of Protocol No. 10 to the Treaty of Accession of 2003 was that every citizen of the EU had the right to reside in his home town or village, except for the Greek-Cypriot displaced persons from the 1974 Turkish invasion of Cyprus. They complained that their right to freedom of movement and residence which was protected by the *acquis communautaire* as well as the Convention had been subjected to an unjustified restriction because of the suspension which was neither imposed in accordance with law nor justified by the public interest in a democratic society. They further complained that the inaction of the EU institutions could not be reviewed by the European Court of Justice as the legislation was part of the EU founding treaties. They argued that the EU member states were bound by the Convention in this respect on the basis of the case of *Matthews v. the United Kingdom* ([GC], no. 24833/94, ECHR 1999-I.). Such member states were bound, in particular, by their positive obligations under the Convention to ensure that they adequately address the situation of displaced Greek Cypriots and their right to freedom of movement and residence guaranteed by the Convention and its Protocols. The applicants requested that Protocol No. 10 to the Treaty of Accession of 2003 be amended so as to ensure the implementation of the applicants' aforementioned rights.

The Council of the European Union pointed out in their response to the applicants of 11 July 2006 that Protocol No. 10 on Cyprus was agreed upon and ratified by all of the 25 signatory States to the Accession Treaty of 2003 and that, as such, any amendment would have to follow the same course. Protocol No. 10 merely reflected the reality of the situation in Cyprus by stipulating that the application of the *acquis* was suspended in those areas where the Government of the Republic of Cyprus did not exercise effective control. Hence, lifting the suspension of the *acquis* in such areas was linked to the reaching of a comprehensive settlement in Cyprus as was indeed explicitly provided in the said Protocol. The following was added:

“Nevertheless, the EU Member States have laid down the requirement for Turkey to comply with relevant European case-law on respect for human rights and fundamental freedoms, as a condition in the framework for negotiations on accession by Turkey to the EU. This is closely monitored by the Commission and the Member States, and the EU reiterates it on all relevant occasions. For example, in the EU's position paper tabled at the most recent meeting of the EC-Turkey Association Council on 12 June 2006, it is stated that ‘as regards observance of international human rights law, the Union reiterates the need for Turkey to comply with the European Convention for the Protection of Human Rights and Fundamental Freedoms, including full and timely execution of all judgments of the European Court of Human Rights’ ”.

COMPLAINTS

The applicants complained under Articles 2 and 3 of Protocol No. 4 to the Convention of an unjustified restriction of their right to free movement and residence throughout the territory of the European Union and, in particular, in northern Cyprus, as a result of the suspension of the *acquis communautaire* in northern Cyprus by the Treaty of Accession of 2003. They also added that the suspension violated the right of displaced persons to return to their homes in northern Cyprus. The suspension exceeded what was strictly necessary in the circumstances and amounted to a permanent restriction of their rights. Moreover, the respondent States failed to observe their positive obligations “to take diplomatic, economic, judicial or other measures that [were] in [their] power” as required by their positive obligations under Article 1 of the Convention (*Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 331, ECHR 2004-VII) to ensure the implementation of the applicants’ right of free movement and residence in the northern part of Cyprus by exerting diplomatic and legal pressure on Turkey in the context of its negotiations in relation to accession to the EU.

The applicants also complained that the EU’s enlargement policy discriminated against them as the European Commission imposed an obligation to ensure the right of displaced persons to return as a requirement for accession in the cases of Bosnia and Herzegovina, Croatia and Serbia. In the case of Turkey the European Commission imposed conditions in relation to displaced Kurdish persons whereas no such condition concerning displaced Greek-Cypriot persons has been imposed. They further raised the same complaint under Article 14 of the Convention against all the respondent States and under Article 1 of Protocol No. 12 to the Convention in respect of Cyprus, Finland, Luxembourg and the Netherlands.

The applicants further complained under Article 13 of the Convention of the lack of an effective remedy since the suspension of the *acquis communautaire* in northern Cyprus was not subject to review by the European Court of Justice.

The applicants complained under Article 17 that the respondent States sought to eliminate their right of free movement and residence in Cyprus by incorporating permanent restrictions of such rights into EU primary law. They also maintained that the said restrictions contributed to ethnic cleansing and were contrary to UN Security Council resolutions.

THE LAW

By letter dated 2 July 2009 the common observations of the Governments of Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia and Sweden and the observations of the Government of Cyprus were sent to the applicants, who were requested to submit any observations in reply by 14 August 2009.

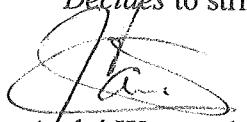
By letter dated 2 October 2009 the applicants were notified that the period allowed for submission of their observations had expired and that no extension of time had been requested. The applicants' attention was drawn to Article 37 § 1 (a) of the Convention, which provides that the Court may strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to pursue the application.

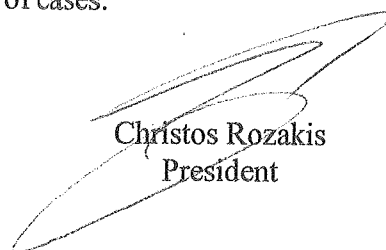
On 9 February 2010, in the absence of any response to its previous letter, a second letter was sent to the applicants by registered post, again drawing their attention to the expiry of the period allowed for submission of the applicants' observations and to the terms of Article 37 § 1 (a) of the Convention. The letter was duly delivered on 12 February 2010. However, no response has been received.

The Court considers that, in these circumstances, the applicants may be regarded as no longer wishing to pursue their application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.


André Wampach
Deputy Registrar


Christos Rozakis
President