

SUPREME COURT OF CYPRUS

(Application No. 759A/2006)

30 April 2007

ARTEMIDIS, P., ARTEMIS, KONSTANTINIDIS, NIKOLAIDIS, NIKOLAOS,
KRONIDIS, ILIADIS, CRAMBE, GABRIILIDIS, CHATZICHAMPIS,
PAPADOPOYLOY, FOTIOY, NIKOLATOS, DD.

Applicants:

1. ALI EREL
2. MUSTAFA DAMDELEN

and

1. REPUBLIC OF CYPRUS, THROUGH ANDREA CHRISTOU, MINISTER OF THE
INTERIOR
2. ATTORNEY GENERAL OF THE REPUBLIC
3. REPUBLIC OF CYPRUS

The applicants are appearing on their own behalf

R. Papaeti – lawyer of the Republic of Cyprus and defendants

JUDGEMENT

ARTEMIDES, P.: On 21.5.2006 elections were held in the Republic of Cyprus for members of the House of Representatives. On 28.2.2006 the two applicants visited the Minister of the Interior and handed him 78 applications from Turkish Cypriot citizens, asking to be placed in a separate electoral list for Turkish Cypriot citizens so that they may exercise their voting rights. One of the applicants, Ali Erel, appears to be the leader of this movement. The Minister rejected the request and informed the applicants accordingly in a letter dated 12.4.2006 written in Turkish. As a result of the Minister's rejection the applicants submitted to the Registrar of the Supreme Court a legal demarche calling for a statement from the Court that the controversial decision of the Minister is null and void. The authors of the demarche, which was written in Turkish, did not follow any of the procedures as regards the writing of special demarches whereby the various competences of the Supreme Court are evoked. The officers of the Registrar, taking into account the fact that the applicants were seeking redress, namely the annulment of the Minister's decision in order to enable them to exercise their voting rights, of course following the procedure that they claimed should be followed, filed the case under the category of electoral applications and submitted it to the Plenary of the Supreme Court, over which according to article 145 of the Constitution, the Electoral Office has exclusive jurisdiction.

The applicants chose to present their case before us without the help of a lawyer. Therefore the Court, following its standard practice of facilitating a party who does not have legal counsel, and irrespective of any of clauses in the procedures providing for the forms of expression of legal demarches, focused on and discussed the essence of the application, which it considered to be an appeal submitted in accordance with article 146 of the Constitution which challenges the decision of the Minister of the Interior in rejecting their legal application. In addition the Court facilitated the applicants in submitting all the documentation of the procedure in Turkish, which is their mother tongue, and agreed that Mr Erel be allowed to speak in Turkish. All the documents were translated into Greek and the services of a translator were used throughout the proceedings. The translator was also approved by the applicants.

The applicants, in order to support their case invoke articles 62 and 63 of the Constitution, as it stood before being amended whereby the number of seats was increased. Here below is the text verbatim:

Article 62

1. The number of Representatives shall be fifty:

Provided that such number may be altered by a resolution of the House of Representatives carried by a majority comprising two thirds of the Representatives elected by the Greek Community and two thirds of the Representatives elected by the Turkish Community.

2. Out of the number of Representatives provided in paragraph 1 of this Article seventy per centum shall be elected by the Greek Community and thirty per centum by the Turkish Community separately from amongst their members respectively, and in

the case of a contested election, by universal suffrage and by direct and secret ballot held on the same day.

The proportion of Representatives stated in this paragraph shall be independent of any statistical data.

ARTICLE 63

1. Subject to paragraph 2 of this Article every citizen of the Republic who has attained the age of twenty one years and has such residential qualifications as may be prescribed by the Electoral Law shall have the right to be registered as an elector in either the Greek or the Turkish electoral list:

Provided that the members of the Greek Community shall only be registered in the Greek electoral list and the members of the Turkish Community shall only be registered in the Turkish electoral list.

2. No person shall be qualified to be registered as an elector who is disqualified for such registration by virtue of the Electoral Law.

As mentioned in the beginning of this ruling, the applicants wished to be registered as voters in a separate list, namely that of the Turkish Cypriot citizens of the Republic of Cyprus. Thus it follows that they are seeking the right of being elected by the Turkish Cypriot voters, who are in the separate list of Turkish Cypriot voters, in order to take over a parliamentary seat again from the separate number of votes that the constitution allows for the Turkish Cypriot community.

This demarche of the applicants, affects the very continuation of the existence of the Republic of Cyprus, which constitutes the internationally recognised legal state which was established in 1960. From 1963 – 1964 the state bases its legal existence and its continuing functioning, on the law of necessity as laid out in the case of *The Attorney General of the Republic v. Mustafa Ibrahim and others* (1964) C.L.R. 195, and which has since been consolidated as the axis on which the legal entity of the Republic of Cyprus is based. The Turkish Cypriot community by a decision of its leadership abandoned its-participation in all bodies of the state as provided by the bi-communal constitution of 1960. This cornerstone legal decision exists side by side with the Constitution, which as the ruling said, also contains the self contained rule of law governing the continuing existence and functioning of the state as a legal and democratic entity. We refer to the above decision to which the conditions refer to in detail and the reasons which unavoidably led to the adoption and prevalence of the law of necessity. We must, however, add something very important. These reasons became even more urgent after the Turkish invasion of Cyprus in the summer of 1974. The invading troops divided the territory of the Republic of Cyprus, and have since kept it divided. All the Turkish Cypriots who lived throughout its territory were transferred to the occupied northern part of Cyprus, where it is Turkey that exercised true control, while at the same time, and during the invasion, all the Greek Cypriots living in that part of the territory of the Republic of Cyprus were evicted. As a result, today only a small number of Greek Cypriots live in the occupied part of Cyprus and very few Turkish Cypriots live in the territory controlled by the Republic of Cyprus.

The above true facts are not just findings of our Court. They are confirmed in a series of decisions of the European Court of Human Rights (ECHR) in which the international recognition of the Republic of Cyprus as a legal state is considered as an indisputable given, while at the same time it deems the state existing in the northern part of Cyprus under Turkey's control, as illegal. Specifically, in the inter-state appeal before the ECHR *Cyprus v.*

Turkey (IGC) no 25781/94 ECHR 2001-IV) the Court, in rejecting Turkey's argument that the Republic of Cyprus does not have *locus standi* in the case because it only represents the "Greek Cypriot administration", said the following in Paragraph 61:

"61. The Court, like the Commission, finds that the respondent Government's claim cannot be sustained. In line with its Loizidou judgment (merits) (loc. cit.), it notes that it is evident from international practice and the condemnatory tone of the resolutions adopted by the United Nations Security Council and the Council of Europe's Committee of Ministers that the international community does not recognise the "TRNC" as a State under international law. The Court reiterates the conclusion reached in its Loizidou judgment (merits) that the Republic of Cyprus has remained the sole legitimate government of Cyprus and on that account their locus standi as the government of a High Contracting Party cannot therefore be in doubt (loc. cit., p. 2231, § 44; see also the above-mentioned Loizidou judgment (preliminary objections), p. 18, § 40)."

What is mentioned in the case of **Loizidou v. Turkey**, to which the above extract refers, is also repeated in the recent decision of the ECHR in the **Xenides-Arestis v Turkey Applic. No 46347/99 Judgment 22.12.2005**.

Of more direct relevance and importance to our case is the ECHR judgment in the case of Aziz v Cyprus, Appl.No.69949/01 ECHR 2004 V. The facts of the case are as follows: The applicant Mr Aziz, on 27.4.2001 appealed to the Supreme Court against the decision of the Minister of the Interior, who refused to allow him to be registered in the electoral lists so that he can exercise the right to vote in the parliamentary elections of 27.5.2001. Mr Aziz, who incidentally is the person appointed as translator in the case we are examining, had always been a permanent resident in the area controlled by the Republic of Cyprus. In his appeal before the Supreme Court of Cyprus he invoked article 3 of Protocol 1 of the European Treaty on Human Rights in order to support that the Republic of Cyprus should have taken the relevant measures to enable him to carry out his right to vote and be voted for, a right which is safeguarded by the above provision of the Protocol. On 23.5.2001 the Supreme Court rejected Mr Aziz's appeal with a specific reference to articles of the Constitution of the Republic of Cyprus, which provided for the creation of separate electoral lists for the Greek and Turkish Cypriot communities (attached herewith). The Court ruled that it does not have the authority to rewrite the said articles in order to provide Mr Aziz with the rights he was demanding, and that any remedy that could be made to cover such instances would fall under the jurisdiction of other bodies of the state. See: (**Ibrahim Aziz v Republic of Cyprus, (2001) 3(A) A.A.D. 501**). The ECHR in accepting Mr Aziz's appeal, says the following important things that directly affect the whole of the case we are currently discussing.

"26. The Court observes that the Cypriot Constitution came into force in August 1960. Article 63 thereof provided for two separate electoral lists, one for the Greek-Cypriot community and one for the Turkish-Cypriot community. Nonetheless, the participation of the Turkish-Cypriot members of parliament was suspended as a result of the anomalous situation that began in 1963. From then on, the relevant Articles of the Constitution providing for the parliamentary representation of the Turkish-Cypriot community and the quotas to be adhered to by the two communities became impossible to implement in practice."

27. *In deciding the applicant's case, the Supreme Court held that Article 63 of the Cypriot Constitution and Article 5 of Law 72/79 (relating to the election of members of parliament) did not provide for members of the Turkish-Cypriot community living in the government-controlled part of Cyprus to vote in the parliamentary elections and admitted that it could not intervene on the basis of the law of necessity in order to fill the legislative gap in this respect.*

28. *Although the Court notes that States enjoy considerable latitude to establish rules within their constitutional order governing parliamentary elections and the composition of the parliament, and that the relevant criteria may vary according to the historical and political factors peculiar to each State, these rules should not be such as to exclude some persons or groups of persons from participating in the political life of the country and, in particular, in the choice of the legislature, a right guaranteed by both the Convention and the Constitutions of all Contracting States.*

29. *In the present case, the Court notes that the irregular situation in Cyprus deteriorated following the occupation of northern Cyprus by Turkish troops and has continued for the last thirty years. It further observes that, despite the fact that the relevant constitutional provisions have been rendered ineffective, there is a manifest lack of legislation resolving the ensuing problems. Consequently, the applicant, as a member of the Turkish-Cypriot community living in the government-controlled area of Cyprus, was completely deprived of any opportunity to express his opinion in the choice of the members of the House of Representatives of the country of which he is a national and where he has always lived.*

30. *The Court considers that, in the light of the above circumstances, the very essence of the applicant's right to vote, as guaranteed by Article 3 of Protocol No. 1, was impaired. It follows that there has been a violation of that provision."*

Equally important, and we therefore consider it necessary to include them here verbatim, are paragraphs 36., 37., 38. of the same ruling.

"36. The Court considers that, in the instant case, the complaint under Article 14 of the Convention is not a mere restatement of the applicant's complaint under Article 3 of Protocol No. 1. The Court notes that the applicant is a Cypriot national, resident in the government-controlled area of Cyprus. It observes that the difference in treatment in the present case resulted from the very fact that the applicant was a Turkish Cypriot. It emanated from the constitutional provisions regulating the voting rights between members of the Greek-Cypriot and Turkish-Cypriot communities that had become impossible to implement in practice.

37. Although the Court takes note of the Government's arguments, it considers that they cannot justify this difference on reasonable and objective grounds, particularly in the light of the fact that Turkish Cypriots in the applicant's situation are prevented from voting at any parliamentary election.

38. Thus, the Court concludes that there is a clear inequality of treatment in the enjoyment of the right in question, which must be considered a fundamental aspect of the case. There has accordingly been a violation of Article 14 of the Convention taken in conjunction with Article 3 of Protocol No. 1."

The House of Representatives, complying with the above ECHR ruling, passed a special law on 26.1.2006 (Law on Exercising the Right to Vote and be Voted by Members of the Turkish Cypriot community permanently resident in the Free Areas of the Republic (Provisional Clauses) of 2006, N.2(I)/2006), whereby the right to vote and be voted of members of the Turkish Cypriot community permanently resident in the government-controlled areas is guaranteed.

The two applicants, in accordance with the admittedly true facts, currently have and have always had their permanent residence in the northern part of Cyprus, which is occupied and under the control of Turkish troops. They therefore, and under these circumstances, could not claim the individual right of voting and being voted for on the basis of the ECHR ruling in the Aziz case, and the above Law of the Republic of Cyprus. That is why they are claiming that, as members of the Turkish Cypriot community, the above Law should be declared unconstitutional, and insist on the application of articles 62 and 63 of the Constitution.

For the reasons given above, the appeal is deemed unacceptable and is rejected.