



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

FOURTH SECTION

CASE OF SELIM v. CYPRUS

(Application no. 47293/99)

JUDGMENT
(Friendly settlement)

STRASBOURG

16 July 2002

In the case of Selim v. Cyprus,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr A. PASTOR RIDRUEJO,

Mrs E. PALM,

Mr L. LOUCAIDES,

Mr M. FISCHBACH,

Mr S. PAVLOVSKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 2 July 2002,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 47293/99) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Cypriot national, Mr Kemal Selim ("the applicant"), on 30 March 1999.

2. The applicant was represented by Mr S. Drakos, a lawyer practising in Nicosia. The Cypriot Government ("the Government") were represented by their Agent, Mr A. Markides, Attorney-General of the Republic of Cyprus.

3. The applicant complained under Articles 8, 12, 13 and 14 of the Convention that he had been denied the right to marry and found a family, as there was no law governing the rights of Turkish Cypriots to marry or any alternative legislation for that purpose.

4. On 18 September 2001, after obtaining the parties' observations, the Court declared the application admissible [*Note by the Registry*. The decision is reported in ECHR 2001-IX].

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section.

6. On 12 February 2002 and on 19 February 2002 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case. Further information was provided by the Government on 26 March, 26 April and 23 May 2002.

THE FACTS

7. On 8 January 1999 the applicant, through his lawyer, sent a letter to the Municipality of Nicosia informing it that he wished to contract a civil marriage with a Romanian citizen, Ms Ion Ramona, and inviting it to fix the procedure, time and venue for the celebration.

8. By a letter of 28 January 1999 the Municipality of Nicosia informed the applicant that Section 34 of the Marriage Act did not provide the possibility for a Turkish Cypriot professing the Muslim faith to contract a civil marriage.

9. The applicant was thus forced to marry in Romania without any of his family or friends being able to attend. On 14 February 1999, on his return to Cyprus with his wife, at Larnaca International Airport, the immigration authorities refused entry to his wife unless the applicant paid 300 Cypriot pounds (CYP) in order to cover, if need be, the cost of her repatriation to Romania. The applicant paid that sum and his wife now lives with him in Cyprus. On 31 March 2000 the applicant's wife applied to the Cyprus immigration authorities and was granted the status of a resident alien, as she had resided under the same roof with the applicant as his wife for one year from the date of their marriage. The sum of CYP 300 was returned to the applicant.

THE LAW

10. On 19 February 2002 the Court received the following declaration from the Government:

“I declare that, with a view to securing a friendly settlement of the above-mentioned case, the Government of Cyprus offer to pay 5,080 Cyprus pounds by way of just satisfaction and 3,000 Cyprus pounds plus VAT by way of legal costs to Mr Kemal Selim. These sums are to cover any pecuniary and non-pecuniary damage as well as costs, and they will be payable within three months from the date of delivery of the judgment by the Court pursuant to Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

11. On 12 February 2002 the Court received the following declaration signed by the applicant's representative:

“I note that the Government of Cyprus are prepared to pay me the sum of 5,080 Cyprus pounds by way of just satisfaction and 3,000 Cyprus pounds plus VAT by way of legal costs with a view to securing a friendly settlement of the ... application pending before the European Court of Human Rights.

I accept the proposal and waive any further claims against Cyprus in respect of the facts of the application. I declare that this constitutes a final settlement of the case.

This declaration is made in the context of a friendly settlement which the Government and I have reached.

I further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court's judgment."

12. Furthermore, by a letter of 26 March 2002, the Government informed the Court that they had introduced on 28 February 2002 a draft bill for enactment in Parliament which would allow civil marriage where one or both spouses are members of the Turkish community. Under the said bill (entitled "Application of the Civil Marriage Act 2002 to Members of the Turkish Community (Temporary Provisions Act 2002)"), there is to be temporarily, and so long as the abnormal situation prevailing in the island continues, a suspension of legislative arrangements envisaged under the Turkish Family Law (Marriage and Divorce) Act Cap. 339 and the Turkish Communal Courts Act of 1960 which at present apply to the celebration of civil marriage of Cypriots of Turkish origin. Under the same bill, civil marriage in this case is to be governed, again temporarily and so long as the abnormal situation prevailing in the island continues, by the provisions of a new law (The Civil Marriage Law 2002), also tabled as a bill in Parliament for approval, and which will apply to all Cypriots without distinction of origin.

13. On 15 April 2002 the applicant sent the following letter:

"We ... thank you for your letter dated April 2nd 2002, informing us about the decision of the Cyprus Government to propose a new bill regarding the issue of our case. We hope that the parliament in Cyprus will soon settle this issue."

14. On 26 April 2002 the Government sent a letter to the Court which read as follows:

"...please note that the relevant bill tabled in Parliament by the Government on 28. 2. 2002, as amended by the House, only to the extent and for reasons of urgency ..., has been approved by Parliament and enacted into Law yesterday, that is, on the 25th of April. I hope that this development will be of assistance to the Court, when considering the matter of friendly settlement of the case in terms of the agreement of the parties ... Copy of the new law will be submitted to you as soon as this is published in the Official Gazette of the Republic."

15. On 23 May 2002 the Government sent to the Court a copy of the new Law 46(I)/2002 providing for the temporary application of the Marriage Act Cap. 279 to members of the Turkish Community, which was enacted by Parliament, together with the following letter:

"... please find enclosed herein, copy of the relevant law (Law 46(I)/2002) which was enacted by Parliament on 25 April 2002 and was published in the Official Gazette of the Republic on 2 May 2002.

The following is the gist of the various provisions of the above Law, as to the right to get married in Cyprus by citizens of the Republic belonging to the Turkish Community:

1. Before the relevant Law 46(I)/2002 was enacted, the above citizens could not get married under the provisions of the Marriage Law Cap. 279, which permit the celebration of civil marriage in Cyprus by Mayors acting as Marriage Officers, owing to the fact that the Law was not applicable in cases in which either party to the proposed marriage was a Turk professing the Muslim faith. The obstacle to the application of the Marriage Law to citizens of the Republic who are members of the Turkish community, has now been lifted through the abolition by the new Law 46(I)/2002, of the offending section 34 of the Marriage Law Cap. 279, whose provisions set the said obstacle in the first place.

2. At the same time, the new Law provides that as long as the abnormal situation prevailing in the island continues, the provisions of the Marriage Law Cap. 279 on every matter on which provision is made by it, including the matter of celebration of civil marriage by Marriage Officers, shall also be applicable where one or both parties to the proposed marriage is a member of the Turkish Community.

3. The combined effect of the above provisions of the new Law 46(I)/2002, is that the members of the Turkish Community can now contract civil marriage under the provisions of the Marriage Law Cap. 279, that is, they can have their marriage celebrated by Marriage Officers under the provisions of Cap. 279.

It is to be noted that ... when a new comprehensive Law on Civil Marriage is enacted by Parliament, abolishing the different Laws (including Cap. 279) governing at present the celebration of civil marriage in Cyprus, the matter of celebration of civil marriage of members of the Turkish Community shall be governed under the provisions of a Law to be also simultaneously enacted by Parliament ...The provisions of the relevant bill in this respect, which has been tabled in Parliament and is pending before the House (copy enclosed) together with the comprehensive bill on civil marriage, are in fact identical to the provisions of the new Law 46(I)/2002, the only difference between the two being, that when the new comprehensive Law on civil marriage is enacted by Parliament, the Law to govern the celebration of civil marriage of members of the Turkish Community shall be the said new comprehensive Law on civil marriage, instead of Cap. 279.”

16. The Court takes formal note of the agreement reached between the Government and the applicant (Article 39 of the Convention). It notes in addition that Law 46(I)/2002 which was enacted in May 2002 provides for the application of the Marriage Act Cap. 279 to members of the Turkish Community thus conferring on them the right to marry. It further notes that a new law (The Civil Marriage Act 2002), which will apply to all Cypriots without distinction of origin, is also to be tabled as a bill in Parliament for enactment. In these circumstances, the Court finds no reasons based on respect for human rights which would require the continued examination of the application (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

17. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 16 July 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President