



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

FOURTH SECTION

DECISION

Applications nos. 9130/09 and 9143/09  
Nicos PAVLIDES against Turkey  
and Spyridon GEORGAKIS against Turkey  
lodged on 20 January 2009 and 23 January 2009 respectively

The European Court of Human Rights (Fourth Section), sitting on 2 July 2013 as a Chamber composed of:

Ineta Ziemele, *President*,  
David Thór Björgvinsson,  
Päivi Hirvelä,  
Ledi Bianku,  
İşıl Karakaş,  
Vincent A. De Gaetano,  
Paul Mahoney, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above applications lodged on 20 January 2009 and 23 January 2009 respectively,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The first applicant, Mr Nicos Pavlides, is a Cypriot national who was born in 1975 and lives in Nicosia. The second applicant, Mr Spyridon Georgakis, is a Cypriot national, born in 1971 and resident in Engomi, Cyprus; he is bishop of the see of Tamasos and Orinis of the Church of Cyprus. The applicants are represented by Mr John Mylonas, a lawyer

practising in Nicosia. The Turkish Government were represented by their Agent. The Cyprus Government did not exercise their right to intervene.

#### **A. The circumstances of the case**

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

3. The applicants are members of the Church of Cyprus, which is regarded as having been founded by Saint Barnabas around the first century. The traditional burial place of Saint Barnabas is located on a hilltop in the area near Famagusta now occupied by Turkish forces and administered by the “TRNC” (the “Turkish Republic of northern Cyprus”) since 1974. The Monastery of Saint Barnabas and a small church are located at that site. They are now used to house an icon museum and receive tourists and visitors at specified times.

4. After the partial lifting of travel restrictions in 2003, efforts were made by the Abbot of the Monastery of Saint Barnabas to resume religious rites at the site, negotiations being conducted through the United Nations. The request for monthly masses at the monastery and church was refused; the “TRNC” authorities initially agreed that mass could be celebrated at the church every three months at pre-arranged times authorised in advance.

5. Following this agreement, mass was celebrated several times at the church during 2008.

6. On 25 June 2008, UNIFCYP received a written reply from the “TRNC” authorities stating that as the last periodic holy mass had been performed on 8 May 2008 the next service could be arranged for the first week of August. By letter dated 26 June 2008, the United Nations Chief Civil Affairs Officer informed the Abbot that the request to perform a mass on 5 July 2008 at the monastery had been refused; he stated that permission was however given for a mass to be celebrated on 2 August 2008 at the church. There is no evidence that this letter or its contents were communicated to the “TRNC” authorities.

7. On 2 August 2008, a group of about 70 persons, including the applicants, travelled to church. Mass commenced at 7.00 a.m.

8. According to the respondent Government, the caretaker of the monastery, who was unaware of any arrangements for a service, informed the authorities of the arrival of the Greek Cypriot congregation. The police contacted the Director of Antiquities who stated that no permission had been given for a service on that date. “TRNC” police officers arrived at the church and demanded to see the permit for holding the mass. A member of the congregation was despatched to fetch the UNFICYP letter which had been left in Nicosia. At 8.30 a.m. the police conducted the people out of the church.

9. The applicants stated that the police made threats to arrest and detain anyone who did not comply. They stated that the people exited the church into a courtyard where the points of entry were guarded by more police officers. Police officers demanded the names of those present; the first applicant and others refused to give their names and were threatened with arrest. They eventually complied to prevent escalation of the situation. The second applicant telephoned the President of the Republic of Cyprus who contacted Mr Talat, leader of the “TRNC”; Mr Talat assured the President that if there was a valid permit, the service would be allowed. Eventually, after one to one and a half hours, the applicants and other people were permitted to leave the courtyard. They gathered some 50 metres from the church in a field and continued with the mass there. The letter from UNFICYP of 26 June 2008 was brought back from Nicosia and shown to the police officers. They refused to acknowledge it and demanded a permit from the “TRNC” authorities. All protests in this regard were disregarded. The police officers refused to allow the mass to continue in the field and demanded that everyone leave.

10. The respondent Government stated that the police did not keep the congregation in the courtyard against their will nor did they force them to disperse. In their submission, the congregation chose to remain in the vicinity of the church while waiting the return of the person sent to find the permission for the service.

11. From the information provided by the parties, it appears that mass was celebrated at the church without interruption on 6 September 2008 and 1 November 2008, on seven occasions in 2009, on 10 occasions in 2010 and monthly in 2011. It appears that masses were allowed in the monastery on one occasion in June 2008, two occasions in 2009 and once in 2010.

12. Complaints about the general restrictions on services were made by the Abbot to the UN Special Representative in Cyprus and other high profile figures. No copies of any complaints about the interrupted service on 2 August 2008 have been provided. The applicants explained that the Abbot did not wish to draw attention to the matter for fear of provoking still more restrictions on their visits to the holy site. The respondent Government stated that the service arranged shortly afterwards at the church on 6 September 2008 was to replace the earlier disrupted service on 2 August 2008.

## **B. Relevant domestic law and practice**

13. Law No. 60/1994 as amended by Law No. 13/2001 - “the Antiquities Law” (unofficial translation provided by the respondent Government) provides as relevant:

Article 11 § 1 : Without permission from the Directorate, it is prohibited interfere physically, either temporarily or permanently, with antiquities, natural resources and

the areas surrounding them and/or by building in them or the conservation areas surrounding them and conducting excavations or using them for any other purpose, to building housing or trespassing on them, taking the materials that come out of their demolition or destruction, change the way they are used, divide them in a way which would affect their qualification or use them in a way that would result in their destruction. Anyone who acts in contravention will commit a crime.

...

#### Offences and punishment

Article 50(2) (A) Anyone who acts in contravention of the provisions of subsections (1) and (4) of section 11 .... shall be guilty of an offence and upon conviction shall be liable to imprisonment up to eight years or to a fine up to two hundred and fifty million Turkish Liras, or both

(B) In cases when the movable or immovable antiquities are not damaged as a result of the act which constitutes the offence, the offender shall be liable to imprisonment for up to 3 years or to a fine of up to one hundred and fifty million Turkish liras or both.

## COMPLAINTS

14. The applicants complained under Article 3 that the interruption of the mass was a particularly offensive act of sacrilege at a place of supreme religious significance for Orthodox Cypriots. It was an act of gross humiliation disclosing inhuman and degrading treatment.

15. The applicants complained under Article 5 that they were detained in the courtyard by armed men constituted an arbitrary and unjustified deprivation of liberty which did not fall within any lawful ground of detention.

16. The applicants complained under Article 9 of the continued refusal of the Turkish forces to allow any masses in the Monastery of Saint Barnabas, the unjustified restrictions on conducting masses at both the monastery and the church and the interruption and prohibition of mass being carried out on 2 August 2008 despite earlier approval having been given. The restrictions had no basis in law and did not meet a pressing social need. The police forces had not relied on any law for their actions which also did not pursue a legitimate aim and were not necessary. There were no problems of safety or security at a peaceful mass. These restrictions directly affected the applicants' right to manifest their religion at the church and burial place dedicated to the founder of his church.

## THE LAW

### A. Complaint under Article 5 § 1 of the Convention

17. The applicants complained that they had been deprived of their liberty by being held for up to one and a half hours in the courtyard of the church, invoking Article 5 § 1 which provides *inter alia*:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...”

18. The Government submitted that the applicants had not brought the matter before the domestic courts, giving them the opportunity to establish the facts of the incident and to assess the alleged violations of their rights. They pointed out that the European Convention on Human Rights was applicable in northern Cyprus, as was the jurisprudence of the Court. Even assuming exhaustion of domestic remedies, the Government asserted that the applicants had not been taken into custody or detained. The applicants waited of their own volition for a member of their group to fetch the UNFICYP letter. They were not hindered from going home or walking around the church while waiting. No measures of search were applied; all kept their mobile phones.

19. The applicants submitted that the respondent Government had not specified the court or remedy that should be utilised and thus had only invoked non-exhaustion in vague and general terms which was insufficient to show the existence of an effective domestic remedy. On the substance, they stated that they did not wait voluntarily and were kept cooped up in a fenced courtyard. This was without justification and in violation of Article 5.

20. The Court recalls that Article 5 § 1 is not concerned with mere restrictions on liberty of movement, which are governed by Article 2 of Protocol No. 4. In order to determine whether someone has been “deprived

of his liberty” within the meaning of Article 5 § 1, the starting point must be his concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation of and restriction upon liberty is one of degree or intensity, and not of nature or substance (see *Engel and Others*, § 59; *Guzzardi*, §§ 92-93; *Storck*, § 71, all cited above; and also, more recently, *Medvedyev and Others v. France* [GC], no. 3394/03, §§ 73, ECHR 2010; *mutatis mutandis*, *Austin and Others v. the United Kingdom* [GC], nos. 39692/09, 40713/09 and 41008/09, §§ 52-60, ECHR 2012).

21. In the present case, the Court notes that, as pointed out by the respondent Government, the applicants themselves made no complaint to any official authority and did not bring the complaint which they raise here, of unlawful and unjustified deprivation of liberty, before the domestic courts in the “TRNC” area. On the applicants’ own statement of facts, the matter was not raised for fear of jeopardising future arrangements for services at the church. Whether that concern was a valid ground of exemption or not from the requirement to exhaust available domestic remedies under Article 35 § 1 of the Convention, the Court observes that there has been no examination of the facts, with assessment of witness evidence for example. It is therefore faced with two versions of events which have been untried and untested on the domestic level.

22. In these circumstances, weighing both accounts, the Court would note that the applicants’ assertion that they were kept in the church courtyard against their will is contradicted by the Government’s assertion that the applicants’ acknowledged intention was to remain near the church so that they could resume the service in due course. Indeed the applicants do not state that there was anywhere else they in fact wished to go instead. On their own account, after an hour to an hour and half, the group did move to another location where they decided to hold a service in the open air. The Court does not doubt that the presence of police officers while the group waited the return of one of the number with the requested proof of authorisation was an intimidating feature. It is not however apparent that any measure of direct coercion or force was applied by any police officer to either of the applicants preventing them from returning home or going to any other specific place. It might also be noted that the area was not open to the public without permission and that access was regulated. The situation could be construed as one where the applicants and other congregants were allowed to wait in particular areas, under supervision, until the return of their member with the purported written authorisation.

23. In light of these considerations, the lack of proof of coercive measures and the relatively short period during which the applicants waited in the courtyard, the Court is not persuaded that they have shown that they have been deprived of their liberty within the meaning of Article 5 § 1 of

the Convention. It follows that this part of the application must be rejected as manifestly ill-founded within the meaning of Article 35 §§ 3(a) and 4 of the Convention.

## **B. The complaints under Article 9 of the Convention**

24. The applicants complained that the religious service conducted at the church at the Monastery of Saint Barnabas had been disrupted by the police as had their attempt to resume the service in an adjacent field, as well as complaining about restrictive access to religious sites in the “TRNC” generally. They invoked Article 9 of the Convention which provides:

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

25. The Government submitted, as above, that the applicants had not brought their complaints before the courts and thus had not exhausted domestic remedies. As to the substance, they submitted that while the applicants’ actions had been inspired by their religious beliefs, the inability of the applicants to pursue the service on that day due to the lack of necessary formal arrangements did not engage Article 9 of the Convention. The acts of the authorities at the monastery were geared to ensuring compliance with the requirements of the Antiquities Law which installed a regime of protection and conservation of cultural and historic monuments and were not aimed at restricting manifestations of freedom of religion. Even if Article 9 was engaged, they submitted that the measures applied by the authorities were authorised by law and proportionate and justified. The only issue was the requirement of pre-authorisation for that particular service on premises protected as a historic monument; apart from that incident based on mis-communication between various interlocutors, the arrangement facilitating services at the site had worked in a reasonable and co-operative manner.

26. The applicants stated that the respondent Government had not specified what cause of action they could take in respect of their complaints. They argued that the disturbance of the mass was clearly a restriction on their exercise of their religious beliefs and that the limitations on access to orthodox sites were in themselves a restriction on their rights. These measures were, in their view, unlawful as they were not a foreseeable consequence of the provisions of the Antiquities Law, and were

disproportionate, as they impaired the essence of the rights of the rightful and historic owners of these sites to freely manifest their religion there and were totally unnecessary for any alleged purpose of safeguarding antiquities.

27. The Court finds it unnecessary to rule on the Government's objection of non-exhaustion of domestic remedies for the reasons set out below.

28. While it is true that not every act which is in some way inspired, motivated or influenced by it constitutes a "manifestation" of the belief, an act of worship or devotion which forms part of the practice of a religion or belief in a generally recognised form will generally be accepted as falling within the meaning of the term (see *Kuznetsov and Others v. Russia*, no. 184/02, §§ 57 and 62, 11 January 2007 *Eweida and Others v. the United Kingdom*, no. 48420/10, § 82, 15 January 2013). The applicants' participation in the service at the church would, in the Court's assessment, constitute a manifestation of their beliefs and thus attract the protection of Article 9 § 1. It remains to be considered whether the limitations imposed by the "TRNC" authorities may be considered as "prescribed by law" and necessary in a democratic society for one or more of the purposes set out in the second paragraph of Article 9 (see, *inter alia*, *Jehovah's Witnesses of Moscow v. Russia*, no. 302/02, § 108, 10 June 2010).

29. As a preliminary remark in this regard, it may be noted that Article 9, taken alone or in conjunction with Article 11, does not bestow a right at large for applicants to gather to manifest their religious beliefs wherever they wish (cf *Pendragon v. United Kingdom*, 31496/98, decision of the Commission, 19 October 1998). It is not for the Court in this case to rule on the events which led to occupation of northern Cyprus and to the situation whereby congregations from the southern part of the Republic of Cyprus no longer enjoy access to church premises in the occupied area on the same basis as that prevailing before 1974. Currently, the church in question falls under the administration of the "TRNC" authorities who have set up a legislative framework to protect and conserve historic sites. Under this legislation, trespassing is a criminal offence and meetings by any group, religious or otherwise, have to be authorised by the Director of Antiquities. It must be recalled that, notwithstanding the lack of international recognition of the regime in the northern area, a *de facto* recognition of its acts may be rendered necessary for practical purposes. Thus the adoption by the authorities of the "TRNC" of civil, administrative or criminal law measures, and their application or enforcement within that territory, may be regarded as having a legal basis in domestic law for the purposes of the Convention (*Foka v. Turkey*, no. 28940/95, §§ 83-8, 24 June 2008; *Cyprus v. Turkey* [GC], no. 25781/94, §§ 93-102, ECHR 2001-IV). The Court would consider that this approach equally applies to the legal framework in this particular case given its nature and purpose. It remains to be determined



whether the measures in issue complied with the requirements of Article 9 § 2, namely whether they pursued any legitimate aims and were “necessary in a democratic society” for achieving such.

30. The Court would note that there is no evidence that the Director of Antiquities gave permission for the service on 2 August 2008. It is persuaded, given the smooth running of the arrangements before and after this incident, that there was in this particular instance a lack of clear notification between the UNFICYP and the two sides as to the date of the next authorised service at the site. In these circumstances, the Court considers that the steps taken by the “TRNC” police were in accordance with the applicable law protecting antiquities and for the aim of ensuring the protection of the site from unauthorised gatherings.

31. As regards the necessity of the measures in the present case, and in particular, the proportionality of the police intervention in ending the service both inside and outside the church, the Court notes that while it is true that the applicants were there in good faith, believing that they had authorisation, it appears from the point of the view of the authorities tasked with preservation of the site, that the gathering was unscheduled, unauthorised and unlawful. Given the requirements of domestic law and the importance of the site, the actions of the authorities in intervening in what they considered to be an unlawful intrusion does not appear either arbitrary or excessive. The Court would recall that the system of prior authorisation worked otherwise without hitch and cannot be said to have been unduly onerous in practice. Nor is it the case that this is the only place that the applicants could meet to worship or that it was ever their own local parish where they had always worshipped on a regular or constant basis, one applicant being unborn and the other a small child in 1974. Furthermore, given in particular the ongoing situation in Cyprus and the desirability of avoiding tensions and flashpoints between the two sides, the Court finds that the fact that the service, which had not been authorised in line with the ongoing arrangements, was cut short on this one occasion cannot be regarded as impacting disproportionately with the applicants’ freedom to manifest their religion.

32. In conclusion, this part of the application must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3(a) and 4 of the Convention.

### **C. The complaints under Article 3 of the Convention**

33. The applicants complained that the disruption of the service on 2 August 2008 breached Article 3 of the Convention which, *inter alia*, prohibits inhuman and degrading treatment.

34. Having regard to its findings above and the specific circumstances of the situation, the Court finds no appearance of any treatment of such

severity as to fall within the scope of this provision. It follows that these complaints are manifestly ill-founded and to be rejected pursuant to Article 35 §§ 3(a) and 4 of the Convention.

For these reasons, the Court

*Decides*, unanimously, to join the applications and

*Declares*, by a majority, the applications inadmissible.

Fatoş Aracı  
Deputy Registrar

Ineta Ziemele  
President