



## Unjustified refusal to recognise the adoption of an adult by his uncle, a monk

In today's Chamber judgment in the case [Negrepontis-Giannisis v. Greece](#) (application no. 56759/08), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**A violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights,**

**A violation of Article 8 in conjunction with Article 14 (prohibition of discrimination),**

**A violation of Article 6 (right to a fair hearing) and**

**A violation of Article 1 of Protocol No. 1 to the Convention (protection of property).**

The case concerned the full adoption of the applicant by his uncle, a monk.

### Principal facts

The applicant, Nikolaos Negrepontis-Giannisis, is a Greek national who was born in 1964 and lives in Athens.

In 1984, when he was a student living at the home of his uncle, Michaïl Negrepontis-Giannisis, an Orthodox bishop, in the United States, he and his uncle initiated proceedings for his uncle to adopt him. A Michigan court made the adoption order the same year.

The applicant returned to Greece in 1985. His adoptive father returned in 1996 and died in 1998 in Athens.

On 24 December 1999 the Athens Court of First Instance, following an application by the applicant, held that American adoption order was not contrary to public policy or *contra bonos mores* (immoral) and declared it final and legally enforceable in Greece. Following this judgment the applicant (whose surname at the time was simply Giannisis) began proceedings to change his name and obtained a positive decision from the prefect of Athens on 4 August 2001, allowing him to add his adoptive father's surname (Negrepontis) to his original surname.

---

<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

In 2000 and 2001 members of the Negrepontis family brought court proceedings challenging the recognition of the adoption. On 25 April 2002 Athens Court of First Instance rejected the application, holding that Greek law did not prohibit adoption by a monk. However, the Court of Appeal overturned that decision on 18 December 2003 on the grounds that monks were prohibited from carrying out legal acts, such as adoption, which related to secular activities, as it was incompatible with monastic life and contrary to the principles of Greek public policy. On 22 February 2006 a division of the Court of Cassation dismissed an appeal on points of law lodged by Mr Negrepontis-Giannisis, stressing that the adoption order had implications in terms of inheritance rights. It referred to the full Court of Cassation the question whether adoption by a monk was contrary to Greek public policy. In a judgment of 15 May 2008 the full Court of Cassation answered that question in the affirmative, basing its decision on canon law texts from the seventh and ninth centuries. The ruling was adopted by 16 votes to eight, with the dissenting judges expressing the view that there was no provision in Greek law which barred monks from adopting.

## Complaints, procedure and composition of the Court

Relying on Articles 6, 8 and 14 of the Convention and Article 1 of Protocol No. 1, Mr Negrepontis-Giannisis complained of the refusal by the Greek authorities to recognise the order for his adoption made in the United States.

The application was lodged with the European Court of Human Rights on 13 November 2008.

Judgment was given by a Chamber of seven, composed as follows:

Nina **Vajić** (Croatia), *President*,  
 Christos **Rozakis** (Greece),  
 Peer **Lorenzen** (Denmark),  
 Khanlar **Hajiyev** (Azerbaijan),  
 George **Nicolaou** (Cyprus),  
 Mirjana **Lazarova Trajkovska** ("the former Yugoslav Republic of Macedonia"),  
 Julia **Laffranque** (Estonia), *Judges*,

and also André **Wampach**, *Deputy Section Registrar*.

## Decision of the Court

### Article 8

The refusal to recognise the adoption in Greece had amounted to interference with Mr Negrepontis-Giannisis's right to respect for his private and family life. Such interference was unacceptable under the Convention unless it was "in accordance with the law", pursued one or more "legitimate aims" within the meaning of Article 8 § 2 and was "necessary in a democratic society" in order to achieve them. The key issue in Mr Negrepontis-Giannisis's case concerned the last of those three criteria.

The Court observed that the texts on which the Court of Cassation, sitting as a full court, had relied were all ecclesiastical in nature and dated back to the seventh and ninth centuries. However, national legislation had been passed in 1982 recognising the right of monks to marry and there was no domestic legislation refusing them the right to adopt. In today's case, the adoption order had been obtained in 1984, when the applicant was already of age. It was valid for 24 years, and the adoptive father had expressed his wish to have a legitimate son who would inherit his property.

Accordingly, the Court was of the view that the refusal to implement in Greece to the adoption order in respect of Mr Negrepontis-Giannisis had not met any pressing social need and had not been proportionate to the aim pursued. There had therefore been a breach of Article 8.

#### Article 8 in conjunction with Article 14

The Court reiterated that a difference in treatment – such as the difference in the treatment of Mr Negrepontis-Giannisis, as an adopted child, compared with a biological child – was discriminatory if it had no objective and reasonable justification.

The Court observed that, since 1982, monks had been allowed to marry and found a family and that the law laying down that rule had been enacted before the applicant's adoption in 1984. Hence, a biological child born to Mr Negrepontis at the time the applicant was adopted could not have been deprived of his or her filial rights. In view of this unjustified difference in treatment, there had been a violation of Article 8 taken in conjunction with Article 14.

#### Article 6 § 1

Bearing in mind the texts on which the Greek Court of Cassation had relied in refusing to recognise the adoption and the Court's conclusions under Article 8, the Court also found a violation of Article 6 § 1.

#### Article 1 of Protocol No. 1

The Court took the view that the decision of the Greek courts, which had resulted in the applicant's being deprived of his status as heir, amounted to interference with his right to the peaceful enjoyment of his possessions, in violation of Article 1 of Protocol No. 1.

#### Article 41

The Court considered that the question of the application of Article 41 was not ready for decision and reserved it for a later date.

*The judgment is available only in French.*

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on its [Internet site](#). To receive the Court's press releases, please subscribe to the [Court's RSS feeds](#).

#### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel: +33 3 90 21 42 08

**Frédéric Dolt (tel: + 33 3 90 21 53 39)**

Emma Hellyer (tel: + 33 3 90 21 42 15)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Nina Salomon (tel: + 33 3 90 21 49 79)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.