



## Obligation on Samos winegrowers to be members of a union violated the Convention

In today's **Chamber** judgment<sup>1</sup> in the case of [Mytilinaios and Kostakis v. Greece](#) (application no. 29389/11) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights.**

The case concerned the obligation imposed on the applicants, who are winegrowers, to be members of the Samos Union of viticultural cooperatives, and their inability to obtain a winemaking permit to market their wine.

The Court found that by requiring winegrowers to hand their entire wine production over to cooperatives, domestic law had made the most restrictive choice regarding the freedom not to be a member of an association (negative freedom), whereas the aims pursued (protecting the quality of the grape variety and the winegrowers' revenue) could have been achieved by alternative means. It also considered that the national authorities' refusal to grant the applicants a winemaking permit exceeded what was necessary to strike a fair balance between the conflicting interests and could not be regarded as proportionate to the aims pursued.

### Principal facts

The applicants, Evangellos Mytilinaios and Ioannis Kostakis, are two Greek nationals who were born in 1950 and 1954 respectively and live in Samos (Greece).

They are winegrowers and members of the Samos Union of viticultural cooperatives, an association with compulsory membership, which harvests the grapes and produces and markets a vintage muscat wine that received the controlled designation of origin label in 1970.

Being unable to freely dispose of and market their wine production, the applicants sought permission from the Union on a number of occasions to withdraw their membership but received no reply. On 4 November 2005 they applied to the Supreme Administrative Court for judicial review of the tacit refusal by the authorities to issue them with a winemaking licence. They alleged, among other things, that they had suffered an interference with their right under Article 11 of the European Convention on Human Rights not to be members of an association (negative freedom of association). On 2 November 2010 the Supreme Administrative Court dismissed their application on the grounds, among other things, that the measure in question pursued a legitimate aim: protecting the quality of a unique product. In so far as the applicants were only prevented from producing and marketing the wine and not from freely cultivating their grapevines, the Supreme Administrative Court concluded that the interference complained of had not infringed Article 11 of the Convention.

1. 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).

However, on 30 September 2011 the Commission of the European Union sent the Greek authorities a warning letter and, on 20 June 2013, a reasoned opinion stating that Greece had failed to comply with its obligations under EU regulation no. 1234/2007.

## Complaints, procedure and composition of the Court

Relying on Article 11 (freedom of assembly and association), the applicants complained that the refusal by the national authorities, upheld by the Supreme Administrative Court, to grant them a winemaking licence, on the grounds that the Samos Union of vinicultural cooperatives had exclusive rights to produce and market Samos muscat wine, had interfered with their freedom not to be members of an association.

The application was lodged with the European Court of Human Rights on 28 April 2011.

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

Mirjana **Lazarova Trajkovska** (the “Former Yugoslav Republic of Macedonia”), *President*,  
Ledi **Bianku** (Albania),  
Kristina **Pardalos** (San Marino),  
Linos-Alexandre **Sicilianos** (Greece),  
Paul **Mahoney** (the United Kingdom),  
Aleš **Pejchal** (the Czech Republic),  
Robert **Spano** (Iceland),

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

## Decision of the Court

### Article 11 (freedom of assembly and association)

The Court observed first of all that the Samos Union of vinicultural cooperatives could not be regarded as a public association for the purposes of the European Convention as it was not integrated within the structures of the State and was not vested with administrative, rule-making or disciplinary prerogatives<sup>2</sup>. Article 11 was therefore applicable in the present case.

The Court found that the tacit refusal of the national authorities, upheld by the Supreme Administrative Court, to grant the applicants a winemaking licence on the grounds that the Samos Union of vinicultural cooperatives had exclusive rights to produce and market Samos muscat wine, was an “interference” with their freedom not to join an association (“negative” freedom of association). The Court considered that the interference was prescribed by Law no. 6085/1934 and pursued a legitimate aim, namely, protecting the quality of a unique wine and the revenue of winegrowers in the general interest of the island of Samos.

The Court was aware that the cooperatives were firmly embedded in the local economic fabric and contributed to the development of the area and the activity of their members. It noted the reasons why the system of compulsory membership of cooperatives had been applied for viticulture in Samos: to protect the quality of the grape variety in question, which was a precious resource for Greece’s economy, and develop the cultivation of the grapevines, whose low prices at the time had put farmers off growing the vines. In the Court’s view, those reasons did not appear particularly relevant in the present context, however, as there were a large number of winegrowers today, Samos muscat wine having received the controlled designation of origin label and the export market being very buoyant.

<sup>2</sup> Herrmann v. Germany, no. 9300/07, § 76, 20 January 2011

The Court also considered that the distinction made between winegrowing, which was unrestricted, and producing and marketing the wine, for which membership of a cooperative was compulsory, was an artificial one and in reality excluded any form of autonomy or independence of the winegrowers concerned.

The Court noted that the minority of the Supreme Administrative Court judges had observed in the judgment of 2 November 2010 that the aims pursued could be achieved by other means, such as quality control. A winegrower could choose to become a member of the cooperative or, alternatively, if he or she wished to produce and market the wine him or herself, submit it to a certification procedure. The Court also noted that back in 1993 the legislature had introduced a way of circumventing the principle of compulsory membership of cooperatives as these cooperatives could, on their own initiative, become free cooperatives.

The Court found that by obliging winegrowers to hand their entire production of wine over to the cooperatives, Law no. 6085/1934 had made the most restrictive choice regarding negative freedom of association. Having regard to the particular circumstances of the case, the Court considered that the national authorities' refusal to grant the applicants a winegrowing licence exceeded what was necessary to strike a fair balance between the conflicting interests and could not be regarded as proportionate to the aim pursued. Accordingly, the Court held that there had been a violation of Article 11 of the Convention.

#### Article 41 (just satisfaction)

The Court held that Greece was to pay the applicants 6,000 euros (EUR) each in respect of non-pecuniary damage and EUR 2,000 in respect of costs and expenses.

*The judgment is available only in French.*

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**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.