



## Cypriot authorities' failure to resolve a legislative gap concerning a vacant parliamentary seat breached the Convention

In today's **Chamber** judgment in the case of [Georgios Papadopoulos v. Cyprus](#) (application no. 21454/21) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3 of Protocol No. 1 (right to free elections)** to the European Convention on Human Rights.

The case concerned the fact that Cypriot law did not provide for the possibility to fill a parliamentary seat that had become vacant before the start of the parliamentary term. The applicant in the case was a runner-up candidate in the 2016 parliamentary elections, but was appointed when a member of the European Parliament decided not to take up her seat before the start of the parliamentary term. The applicant's appointment was however annulled in 2017, 2018 and 2020 because the Electoral Court considered that there was no legal or permissible constitutional framework for such substitution.

The Court found that there had been no mechanism – be it appointing a runner-up or holding a by-election – for filling the vacant seat in question, despite the fact that such a scenario, namely a seat not being taken up before the start of parliamentary term, could have been foreseen. The result was that the parliamentary seat was left vacant for a significant period between the annulment of the applicant's appointment and his reinstatement, and the issue remained unresolved for almost an entire parliamentary term. The authorities' failure to effectively resolve this legislative gap or to provide a lawful alternative, whether through legislative or judicial intervention, had ultimately frustrated the choice of the people as expressed in May 2016.

### Principal facts

The applicant, Georgios Papadopoulos, is a Cypriot national who was born in 1965 and lives in Limassol (Cyprus).

Mr Papadopoulos was a runner-up candidate in the 2016 parliamentary elections for the Solidarity Movement.

A Member of the European Parliament – and president of the Solidarity Movement – was elected but she decided not to take the seat prior to the start of the parliamentary term because she wished to remain an MEP.

The Cypriot legal system did not, however, expressly regulate this contingency, that is to say when an elected candidate renounced their seat prior to taking office.

Thus in 2017, 2018 and 2020 the Electoral Court annulled the authorities' decisions to appoint the applicant, who was runner-up, because it considered that there had been no legal or permissible constitutional framework allowing such substitution.

Although Parliament amended the relevant electoral law and the Constitution over those three years to specifically address this issue, the Electoral Court ultimately ruled that these legislative efforts were unconstitutional or retroactive. It found in particular that the amendments resulted in the applicant's appointment through specific legislation rather than a free general election or by-election, which undermined popular sovereignty.

## Complaints, procedure and composition of the Court

Relying on Article 3 of Protocol No. 1 (right to free elections), Mr Papadopoulos complained that despite being appointed three times, the Electoral Court had annulled his mandate each time, in breach of his right to stand for election and the electorate's right to choose the legislature.

The application was lodged with the European Court of Human Rights on 21 April 2021.

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

Ivana Jelić (Montenegro), *President*,  
Erik Wennerström (Sweden),  
Georgios A. Serghides (Cyprus),  
Raffaele Sabato (Italy),  
Alain Chablais (Liechtenstein),  
Artūrs Kučs (Latvia),  
Anna Adamska-Gallant (Poland),

and also Liv Tigerstedt, *Deputy Section Registrar*.

## Decision of the Court

Firstly, the Court noted that the way the elections had been conducted and the subsequent distribution of parliamentary seats by the Chief Returning Officer, responsible for election proceedings, had never been challenged or invalidated. Moreover, an OSCE report on the 2016 elections had expressed full confidence in the electoral process and administration.

The issue arose later when the candidate who had been elected for the seat won by Solidarity Movement had renounced taking it up. This was because there was no mechanism – be it appointing a runner-up or holding a by-election – for filling the seat duly allocated to the Solidarity Movement in May 2016, under the relevant electoral law. Both the applicant and the voters had ended up being trapped in a legal deadlock.

Indeed, there had been no legislative provision for regulating a scenario which could have been foreseen for any number of reasons, such as the death of the appointed MP before the start of parliamentary term, not just the MP declining to take up their seat.

The result was that a parliamentary seat had been left vacant for a significant period and the issue of how to properly fill a parliamentary seat had not been resolved for almost an entire parliamentary term.

The authorities' failure to effectively resolve this gap or to provide a lawful alternative, whether through legislative or judicial intervention, had ultimately frustrated the choice of the people as expressed in May 2016.

The Court found that there had been an interference with the applicant's rights that had not been "lawful", in violation of Article 3 of Protocol No. 1 to the Convention.

### Just satisfaction (Article 41)

The Court held that Cyprus was to pay the applicant 8,000 euros in respect of non-pecuniary damage.

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