

THE *MYTILINAIOS AND KOSTAKIS V GREECE* CASE OF THE EUROPEAN COURT OF HUMAN RIGHTS: THE BEGINNING OF THE END FOR THE MANDATORY COOPERATIVES IN GREECE

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Abstract

In the *Mytilinaios and Kostakis v Greece* case, the European Court of Human Rights (hereafter “ECtHR”) examined whether the forced membership in a particular cooperative, which was exclusively responsible to process and market its members’ production, constituted an infringement with the negative freedom of association of ar. 11 of the European Convention of Human Rights (hereafter “ECHR”).

The Court’s case law on the negative freedom of association has been largely associated with trade-unions. In the case under study, however, the allegations of the violation of the negative freedom of association were examined with regard to cooperatives. The latter posed the question as to whether such factor was crucial for the Court’s decision and what kind of impact the decision had on the cooperative law and the cooperative sector in Greece.

I. FACTS

The applicants of the case under study were two winegrowers and habitants of the island of Samos in Greece³. As with all winegrowers of Samos, the applicants were obliged to become members of the Samos Union of vinicultural cooperatives (hereafter “Union”), which had the exclusive right to harvest its members’ grapes, produce wine from it and sell it in the market⁴. The produced wine (“Samos muscat wine”) is a unique wine variety, cultivated only in the specific region of the country under limited quantities and protected by the special national and European laws⁵.

Since the applicants were dissatisfied with their collaboration with the Union, they expressed multiple times their will to withdraw from it and also requested a vinification license from the public

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³ ECtHR, *Mytilinaios and Kostakis v Greece*, judgment of 3 December 2015, appl. nos. 29389/11, § 7

⁴ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 7-8

⁵ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 8

authorities, in order to convert their production into wine and market it on their own⁶. Both requests were not answered. Since the public authorities refused to grant them such license, in November 2005 they applied to the Supreme Administrative Court for a judicial review⁷. After the dismissal of their application by the Greek Court, they filed for a petition to the ECtHR, on the grounds that there had been a violation of their negative freedom of association of ar. 11 of the ECHR⁸.

II. THE APPLICABLE NATIONAL LAW

A cooperative is defined as mandatory or compulsory, when its formation and its members' participation is not a matter of free will, but, instead, it is forced by law⁹. Withdrawal from such a cooperative is also prohibited¹⁰. Under the Greek legal framework, mandatory cooperatives are protected by the Constitution, as well as by special laws. Specifically, ar. 12.5 of the Greek Constitution reads as follows:

“Establishment by law of compulsory cooperatives serving purposes of common benefit or public interest or common exploitation of farming areas or other wealth producing sources shall be permitted, on condition however that the equal treatment of all participants shall be assured¹¹”.

The above provision allows the common legislator to prescribe the formation of mandatory cooperatives for the above-stated reasons of public interest, as an exception to the freedom of association of ar. 12.1 of the Greek Constitution¹². Despite, however, their mandatory status, such cooperatives have been acknowledged as legal persons of private law¹³.

On the above constitutional basis, the Greek legislature passed several laws¹⁴ on mandatory cooperatives, which can be divided into two categories: a) the ones associated with the agricultural land and forest, aiming at safeguarding the rights of property or their rational use, b) the ones focused on the protection of specialty products or products of particular regions of the country through jointly

⁶ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 7, 9

⁷ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 9

⁸ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 10

⁹ Dagtogloy, P. (2005). Constitutional Law: Civil rights. 2nd Vol., p. 903

¹⁰ Dagtogloy, *ibid*, p. 903

¹¹ For the official translation of the constitution of Greece in English, see <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20agglisko.pdf>

¹² Dagtogloy, *ibid*., p. 903

¹³ Hellenic Supreme Administrative Court, 2903/1983, The Constitution [*To Σύνταγμα*] 1984, p.198 (in Greek). Contra Dagtogloy, *ibid*., p. 904.

¹⁴ Such as the mandatory law 1627/1939 on forest cooperatives, the L. 4878/1931 on Crete Citron Producers' Association, the mandatory law 6085/1934 on the Samos Union of vinicultural cooperatives, the mandatory law 1390/1938 on the Chios's Association of Mastic Producers, the L. 359/1947 on the Union of agricultural cooperatives of Santorini's products - Santo Wines, the decree law 818/1971 of the mandatory cooperative of Kozani's saffron producers, the decree law of the 11th of July 1923 on cooperatives of jointly owned property and fodder. See Ministry of Rural Development and Food (official site), available at <http://www.minagric.gr/index.php/el/ethniko-mitroo-agrotikon-synetairismen-kai-allon-syllogikon-foreon-menu/201-2011-06-07-09-27-04>

organizing, processing and marketing their production¹⁵. One such law was L. 6085/1934, in the explanatory report of which it was mentioned that the Samos wine price volatility, the decline of its cultivation and the phenomena of wine fraud led to radical measures taken by request of all the winegrowers, in order to prevent the financial collapse of the sector and protect the quality of the Samos wine, since it was a unique product and a valuable source of income for the local, as well as the national economy¹⁶. Thus, the law stipulated in ar. 1 of the Greek Constitution, the establishment of local cooperatives, in which all winegrowers of Samos were obliged to participate, and in ar. 5 stated that the above cooperatives would form the Samos Union of vinicultural cooperatives with the purpose of collecting, processing and marketing the production of all its members-cooperatives. The presidential decree of the 25th of May 1934 also attributed to the Union supervisory and monitoring duties towards its members.

III. THE JUDGEMENT

With regard to the applicants' allegations that ar. 11 of the Convention was violated, the Greek government argued that such provision was not applicable in the case under question, since mandatory cooperatives were public-law associations and not private ones. Concerning the applicability of ar. 11, the Court noted that the Union did not fulfill two of the four criteria in order to be considered as a public-law association, namely, the criterion of integration within the structures of the State and the criterion of the existence of administrative, rule-making or disciplinary prerogatives. Therefore, ar. 11 rendered applicable in the case under question.

Furthermore, the Court considered that the tacit refusal by the public authorities to grant a vinification license to the applicants constituted an interference with their negative freedom of association¹⁷. So as for such an interference to be legitimate, it needed: a) to be prescribed by law, b) to serve a legitimate goal and c) to be necessary in a democratic society.

In the case under study the Court noted that the refusal to grant a wine making license to the applicants was based on domestic law (L. 6085/1934). It also pursued the legitimate goal of protecting the rights and freedoms of others by protecting the quality of the Samos Muscat wine and the income of the winegrowers, thereby complying with the first two criteria of ar. 11.2¹⁸. With regard to the third criterion on the necessity of the right's restriction in a democratic society, the Court, through its body of case law, has developed over the years several principles to be followed. In particular, according to the Court's case law, the term "necessary" did not bear the same meaning as "useful" or "suitable"¹⁹. Furthermore, the notion of necessity is to be assessed through the prism of pluralism, tolerance and broadmindedness, that are hallmarks of a "democratic society", in order for a balance to be achieved which ensures the fair and

¹⁵Vavritsa D. (2010). Financial analysis of compulsory cooperatives in Greece. [*Οικονομική διερεύνηση των αναγκαστικών συνεταιρισμών στην Ελλάδα*], Unpublished MS thesis, Aristotelian University of Thessaloniki, Greece (in Greek), p. 38.

¹⁶ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 17, 18

¹⁷ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 53

¹⁸ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 55

¹⁹ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 56

proper treatment of minorities and avoids any abuse of a dominant position²⁰. Lastly, any restriction imposed on a Convention right must be proportionate to the legitimate aim pursued²¹. In this regard, the member state is acknowledged a certain margin of appreciation to assess whether there is a pressing social need that justifies a restriction to a right, which is protected by the ECHR²². Such discretion is not however unlimited, but it is subject to the scrutiny of the ECtHR, which shall examine whether the restriction of the Convention right is proportionate to the pursued legitimate goal and whether the member state presents before the Court convincing reasons to justify the restriction²³.

In the case under study, the Greek government argued that the Union was the only means that could effectively safeguard the Samos muscat wine's quality, and thus its abolishment would lead to prices' decline and the deterioration of the produced wine's quality, destabilizing therefore, the whole wine sector of Samos. On the other hand, the applicants claimed that the Greek government did not provide the Court with evidence that a potential abolishment of the Union would have such a negative impact on the wine producers' sector of Samos and its local economy. According to their allegations, the Union's prices were not competitive and disabled them from covering their production costs.

The Court examined the Greek governments' claims, but it was not convinced that the pressing social needs of 1934, which led to a forced cooperation of the Samos wine sector, existed in the current context. The Court based its opinion on the large number of the Samos Muscat winegrowers and the fact that most of their production had been exported, which indicated that the wine sector of Samos had been well developed, while protected by "the protected designation of origin" regulation. The Court also noted that the Greek legislature permitted in 1993 the mandatory cooperatives' conversion into voluntary cooperatives. The latter, in the Court's view, indicated that the Greek authorities no longer considered the mandatory cooperatives as a sine qua non condition for the existence and development of particular activities or sectors, which were organized under the model of mandatory cooperation.

The Court viewed also the judicial argumentation of the Supreme Administrative Court in its decision of November 2005, which held that there was no violation of ar. 11 ECHR, since the restriction to the freedom of association was only posed to the activities of producing and marketing wine, whereas winegrowing was unrestricted. The latter distinction was deemed by the ECtHR as artificial, excluding any form of autonomy or independence of the winegrowers concerned. Instead, the Court, followed the dissenting opinion of one judge of the Supreme Administrative Court, which noted that the legitimate aim i.e. the protection of the wine's quality, could have been achieved with other measures less intrusive to the negative freedom of association, such as with quality controls by the state or other competent bodies, which would preserve the winegrowers' autonomy and their right to choose whether or not to join a cooperative and to dispose and market their production, accordingly.

To sum up, the applicants were forced to become members of the Samos Union of vinicultural cooperatives. Due to their membership, they had the obligation to hand all their production to the Union, so that the latter would exclusively process and market their production. In the light of the foregoing, the

²⁰ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 56

²¹ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 56

²² ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 56

²³ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 57

Court held that such an obligation was the most restrictive measure with regard to the applicants' negative freedom of association. Furthermore, with regard to the public authorities' refusal to grant the applicants a winemaking license based on L. 6085/1934, the Court ruled that such a measure was disproportionate to the attained goal, exceeding what was necessary for a fair balance between conflicting interests. For all these reasons, the ECHR concluded that in the case under question there had been a violation of ar. 11 of the ECHR.

IV. COMMENTS

a. The legal personality of the cooperative as a non crucial factor for the court's decision

In the case under study, the beneficiaries of the negative freedom of association were members of a mandatory cooperative. It is not frequent for the Court's case law to examine claims on the infringement of the above right with regard to cooperatives, since the main body of relevant case law refers to trade unions or other types of associations. The fact that the association under question was established as a cooperative, and in particular as a mandatory one, according to national law, did not play any crucial role to the Court's decision. The legal personality that the national legislature attributes to the association is only a starting point for the Court²⁴. The key point, thus, that defined the applicability of ar. 11 in the commented case was whether or not the Union was considered as a private or public law association, based on the criteria that the Court had set out.

In general, the Court does not deliberately acknowledge associations under public law, which would result in excluding their members from the protection of the negative freedom of association of ar. 11, but, instead, it tends to maintain a strict stance²⁵, considering an association as a public one, only when all four of its criteria are fulfilled, cumulatively²⁶. The latter was also confirmed in the case under

²⁴ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 36; ECtHR, *Chassagnou et al. v. France*, judgment of 29 April 1999, (appl. nos. 25088/94, 28331/95, 28443/95), § 100: "[i]f Contracting States were able, at their discretion, by classifying an association as 'public' or 'para-administrative', to remove it from the scope of Article 11, that would give them such latitude that it might lead to results incompatible with the object and purpose of the Convention, which is to protect rights that are not theoretical or illusory but practical and effective [.....] The term 'association' therefore possesses an autonomous meaning; the classification in national law has only relative value and constitutes no more than a starting-point"; ECtHR, *Herrmann v Germany case*, judgement of the 20 January 2011 (Application no. 9300/07) (§76); ECtHR, *Schneider v. Luxembourg*, judgement of the 10 July 2007 (appl. no. no. 2113/04) (§69). See also van Veen, W. (2000). Negative Freedom of Association: Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, *The International Journal for Not-for-Profit Law*, Vol. 3, Issue 1, http://www.icnl.org/research/journal/vol3iss1/art_6.htm

²⁵ In both *Le Compte, Van Leuven and De Meyere v. Belgium*, judgement of the 23 June 1981 (appl. no. 6878/75; 7238/75)(§64-65) and *Herrmann v Germany case*, judgement of the 20 January 2011 (appl. no. 9300/07) (§64-65) the ECtHR concluded that the associations at issue were considered of public law, as they fulfilled all four criteria, whereas in *Chassagnou and others v. France*, judgement of the 29 April 1999 (appl. nos. 25088/94, 28331/95 and 28443/95) (§ 101-102) the association was considered of private law, as it did not fulfill all the above criteria.

²⁶ See however Papandreou, M. (2016). The freedom of association according to ar. 11 of ECHR: Mandatory agricultural cooperatives and the negative freedom of association [Το δικαίωμα του συνεταιρίζεσθαι κατά το άρθρο 11 ΕΣΔΑ: Αναγκαστικοί αγροτικοί συνεταιρισμοί και αρνητική ελευθερία του συνεταιρίζεσθαι], *Hellenic Review of European Law (HREL)* [Ελληνική Επιθεώρηση Ευρωπαϊκού Δικαίου (ΕΕΕυρΔ)], Issue 2, p. 260. who argues that the Court in the case under study does not provide a proper explanation, when it comes to assessing the aforementioned criteria, questioning also if there is an hierarchy among them.

study, according to which the Union, not fulfilling two of the four criteria, it was viewed by the Court as a type of private-law association, to which ar. 11 was applicable²⁷.

b. The negative freedom of association

The negative freedom of association, which was claimed to be violated in the case under study, consists of the right to choose not to form or not to join an association, including the right to withdraw from it²⁸. Interestingly, the protection of the above right on the basis of ar. 11 of the Convention²⁹ was not given by the ECtHR, which was reluctant at first to acknowledge it³⁰, but as its case law developed over time, it changed its stance and accepted the protection of both the positive and negative aspect of the freedom of association at an equal footing³¹.

In the case under study the applicants' allegations referred to a violation of their negative freedom of association. The Court examined the above claims and concluded that forcing the applicants to hand over their entire wine production was the most restrictive measure with regard to the applicants' negative freedom of association³². To be, however, more accurate, the obligation of all winegrowers to hand over their production to an association, in order for it to be processed and sold in the markets, seems to restrict their freedom to define the conditions to exercise their profession as winegrowers³³. Since the above was imposed to the applicants as an obligation of their mandatory membership to the Union, it also interfered with their negative freedom of association. In the Convention, although the negative freedom of

²⁷ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 45

²⁸ Grabenwarter, C. (2014). European Convention on Human Rights (Commentary), p.303; ECtHR, *Chassagnou v France*, judgement of 29 April 1999 (appl. no. 25088/94), § 103; ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 53; ECtHR, *Sigurður A. Sigurjónsson v. Iceland* judgment of 30 June 1993, (appl; no. 16130/90), § 37

²⁹ The wording of the ar. 11 of the ECHR refers to the right to form an association, but it does not explicitly prescribe for the right not to form one, as ar. 20(2) of the Universal Declaration of Human Rights does. In the Travaux Préparatoires of the ECHR it was mentioned that : "on account of the difficulties raised by the 'closed-shop system' in certain countries, the Conference in this connection considered that it was undesirable to introduce into the Convention a rule under which 'no one may be compelled to belong to an association' which features in [Article 20 par. 2 of] the United Nations Universal Declaration" (Report of 19 June 1950 of the Conference of Senior Officials, Collected Edition of the "Travaux Préparatoires", vol. IV, p. 262).

³⁰ ECtHR, *Young, James and Webster v. the United Kingdom*, judgement of the 13 August 1981 (*application no. 7601/76; 7806/77*): "52. The Court does not consider it necessary to answer this question on this occasion. The Court recalls, however, that the right to form and to join trade unions is a special aspect of freedom of association (see the *National Union of Belgian Police* judgment of 27 October 1975, Series A no. 19, p. 17, par. 38); it adds that the notion of a freedom implies some measure of freedom of choice as to its exercise. Assuming for the sake of argument that, for the reasons given in the above-cited passage from the travaux préparatoires, a general rule such as that in Article 20 par. 2 of the Universal Declaration of Human Rights was deliberately omitted from, and so cannot be regarded as itself enshrined in, the Convention, it does not follow that the negative aspect of a person's freedom of association falls completely outside the ambit of Article 11 (art. 11) and that each and every compulsion to join a particular trade union is compatible with the intention of that provision. To construe Article 11 (art. 11) as permitting every kind of compulsion in the field of trade union membership would strike at the very substance of the freedom it is designed to guarantee (see, *mutatis mutandis*, the judgment of 23 July 1968 on the merits of the "Belgian Linguistic" case, Series A no. 6, p. 32, par. 5, the *Golder* judgment of 21 February 1975, Series A no. 18, p. 19, par. 38, and the *Winterwerp* judgment of 24 October 1979, Series A no. 33, p. 24, par. 60)".

³¹ van Veen, W. (2000) 'Negative Freedom of Association: Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms', *The International Journal for Not-for-Profit Law*, Vol. 3, Issue 1, http://www.icnl.org/research/journal/vol3iss1/art_6.htm

³² ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 65

³³ Tsironas, T. (2012). Remarks on the Council of the State judgement 3580/2010 D' Chamber [Παρατηρήσεις στην απόφαση ΣτΕ 3580/2010 Δ' Τμ.], [Διοικητική Δίκη (ΑΔΔικ)], Issue 24, (in Greek), p. 326.

association is protected by ar. 11, the freedom to exercise one's profession is not acknowledged by individual provisions. In the case under study, however, the latter right seemed to be indirectly protected by the Convention, through ar. 11, that safeguarded not only the applicants' right not to join the Union, but also their right to choose the conditions under which to dispose and market their wine production³⁴.

c. The failure of the Greek Government to pass the proportionality test - the Court's arguments

Generally, in cases related to associations of ar. 11 (except for trade unions and political parties) the Court leaves only a narrow margin of appreciation to the member states to assess whether there is a pressing social need to impose a restriction to the above right. The above assertion is not unlimited, but it is subject to the supervision of the Court that accepts only convincing and compelling reasons that justify restrictions to the freedom of association³⁵.

In the commented case, the Court came to the conclusion that ar. 11 ECHR was violated, because the Greek Government failed to pass "the proportionality test"³⁶. In other words, it failed to provide the court with persuasive arguments proving that the interference with the negative freedom of association was justified by a pressing social need and it was proportionate to the legitimate goal of the protection of the Samos Muscat wine's quality.

In particular, the government's claim that abolishing mandatory cooperatives shall endanger and destabilize the wine sector of Samos³⁷ did not persuade the Court and rightfully³⁸, since the latter entailed a hypothesis of a 1934 revival, without however providing any evidence to prove it. The Greek Government also argued that the Union was the only appropriate measure to protect the wine's quality³⁹. The above claim was not accepted by the Court, which based its opinion on various compelling arguments, such as the fact that less intrusive measures for the negative freedom of association could have been chosen, thereby following the opinion of the minority of the Supreme Administrative Court⁴⁰. Furthermore, in the Court's view, the reasons that led to the forced cooperation of all winegrowers in 1934, was irrelevant under the current context⁴¹. The above argument holds true, since nowadays there is no pressing social need for the well-developed wine sector of Samos to be organized into mandatory cooperatives, to preserve its viability and prosperity. The Court also took into account the Greek legislature's position that allowed the conversion of mandatory cooperatives to voluntary ones⁴². Based

³⁴ The interference that the court examined as to whether it may be justified by ar. 11.2 ECHR was the tacit refusal of the public authorities to grant the applicants a vinification license. ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 53

³⁵ Golubovic, D. (2013) Freedom of association in the case law of the European Court of Human Rights, *The International Journal of Human Rights*, 17, p. 13 : "In most cases involving violation of Article 11 the Contracting States have failed the proportionality test" with references to ECtHR relevant cases (footnote 80). Sisilianos, L.A. (2017). *European Convention of Human Rights: Interpretation per article [Ευρωπαϊκή Σύμβαση Δικαιωμάτων του Ανθρώπου: Ερμηνεία κατ' άρθρο]* (in Greek), p. 529.

³⁶ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 55-66

³⁷ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 47

³⁸ Papandreou, *ibid* p. 260

³⁹ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 48

⁴⁰ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 63

⁴¹ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 62

⁴² ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 64

on the above, one may argue that if mandatory cooperatives were viewed by the Greek authorities as the only appropriate measure to safeguard specialty products or products from specific regions of the country, their conversion into voluntary cooperatives would not be permitted by law, instead, it would be prohibited by all means. One other interesting point raised by the Court referred to the Supreme Administrative Court's decision, which ruled that there was no violation of ar. 11 ECHR, since the restriction to the freedom of association was only posed to the activities of producing and marketing wine, whereas winegrowing was unrestricted. The above distinction was correctly deemed by the ECtHR as artificial, since cultivating grapes in large quantities is not so much for self-consumption purposes, but mainly for commercial purposes and therefore the restriction abolishes the autonomy of the winegrower to dispose and market his production on his own⁴³.

Based on the above arguments, the Court held that the measure at issue was deemed disproportionate to the pursued aim and therefore there was a violation of ar. 11⁴⁴. The above decision was found to be well grounded and followed existing case law on forced membership in associations that was also deemed to violate the negative freedom of association.

d. Mandatory cooperatives and the cooperative theory

From a (cooperative) theoretical point of view, forced cooperation of the Samos winegrowers does not seem to be in line with the first international cooperative principle of "voluntary membership", based on which the interested parties shall choose whether or not to form or join a cooperative and if they choose to become members, they shall not be prevented from leaving the cooperative⁴⁵. The voluntary nature of cooperatives is also enshrined in the broadly accepted international definition of cooperatives by the ICA, as incorporated in the Recommendation 193/2002 of the International Labor Organization⁴⁶. This is due to the fact that the personality of the cooperators, the will to cooperate and the trust between them are key features of cooperation. Therefore, a forced cooperation is neither an attribution of a genuine type of cooperative, nor does it fall within the internationally accepted ICA definition.

V. IMPACT

Within a short period of time, the Greek government complied with the Court's judgment, by including in the new law on agricultural cooperatives, a provision (ar. 32 L. 4384/2016) on converting mandatory cooperatives to voluntary ones. The latter is effectuated by a joint ministerial decision that is issued in the following cases: a) after a decision by the mandatory cooperative's general assembly, b)

⁴³ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 61, Papandreou, *ibid* p. 260

⁴⁴ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 66

⁴⁵ Munkner, H. (2015). Co-operative principles and co-operative law, 2nd revised edition, p. 97. International Co-operative Alliance: Principles Committee (2015). Guidance notes to the co-operative principles, p.6 : "Some governments that used co-operatives as government controlled engines of economic development made membership of co-operatives compulsory. this too breaches this 1st Principle", p.7 : "the voluntary nature of participation in co-operatives is an indispensable organisational trait that makes them viable and sustainable in competitive markets".

⁴⁶ "A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise". International Co-operative Alliance Statement on the Co-operative Identity, Manchester (UK), 23 September 1995.

after a definite judgment of conviction by courts, c) in order to implement national law. Contrary to previous laws that prescribed for such conversion, the new provision introduces two cases (b and c), where such process is imposed on the mandatory cooperative without the consent of its administrative organs.

Based on the above provision, the 902/51563 joint ministerial decision was issued on the 27th of April 2016, that resulted in the conversion of the Samos Union of vinicultural cooperatives into the new, voluntary Uniform Winemaking Agricultural Cooperative of Samos with the merger of its 22 primary cooperatives-members⁴⁷.

The above developments mark the beginning of the end for the mandatory cooperatives in Greece, an institution that resulted in the formation of successful, export-oriented cooperatives in the agriculture, safeguarding, among other things, the preservation of rare agricultural varieties, prevent their extinction and develop them into significant sources of income for the local and national economy⁴⁸.

Nevertheless, the future impact of such a major change on the function of mandatory cooperatives, and on the production of the above unique products, as well as on the income of the local producers, is yet to be ascertained. A study, however, examined the case of *Santo Wines*, a mandatory wine cooperative based on the island of Santorini, where it concluded that its prosperity was not mainly associated with the mandatory status of membership, but it was rather a result of its successful strategy, which – among other things- aimed at “*fostering interpersonal relationships between members and the management, promoting Santo’s image, and building a strong brand for their products*”⁴⁹.

In order to prevent the Greek government’s claims that were presented before the ECtHR from becoming a self-fulfilling prophesy, leading to the destabilization of the wine sector of Samos, the mandatory cooperatives’ conversion into voluntary ones should go hand in hand with the implementation of effective quality controls. Otherwise, the quality of unique products, such as the Samos Muscat wine, could be endangered. The same applies for the rest of the mandatory cooperatives, the conversion of which should occur as long as proper quality control mechanisms are prescribed by law and can be effectively applied in practice.

VI. CONCLUSION

In the *Mytilinaios and Kostakis v Greece* case, the Court held that the winegrowers’ obligation to hand all their production to their Union based on L.6085/34 was the most restrictive measure with regard to their negative freedom of association⁵⁰. Furthermore, the refusal to grant a winemaking license to the applicants exceeded what was necessary for a fair balance between the right at stake and the rights and freedoms of the winegrowers, and it was also found as disproportionate to the attained goal⁵¹. For all these reasons, the Court ruled that art. 11 of the ECHR was violated⁵².

⁴⁷ Action report on the execution of the judgment of the European Court of Human Rights in the case of *Mytilinaios and Kostakis v. Greece* (application no. 29389/11), 27/02/2017, Committee of Ministers, p. 3.

⁴⁸ Regarding the financial success of mandatory cooperatives see Vavritsa, *ibid.*, p. 111-119.

⁴⁹ Iliopoulos, C. Theodorakopoulou, I. (2014). *Mandatory cooperatives and the free rider problem: the case of Santo wines in Santorini, Greece*. *Annals of Public and Cooperative Economics* 85 (4), p. 678.

⁵⁰ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid.*, § 66

⁵¹ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid.*, § 65

⁵² ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid.*, § 67

In the above case the legal personality of the mandatory cooperative was a non-crucial factor for the Court's decision, which considered the Union as a private law association based on the criteria that it has developed in its body of case law and therefore ar. 11 ECHR was applicable⁵³. Furthermore, the Greek Government failed to convince the Court that the interference with the negative freedom of association was justified by a pressing social need and it was proportionate to the legitimate goal of the protection of the Samos Muscat wine's quality and thus it concluded that ar. 11 was infringed. Although the case referred to the restriction of the negative freedom of association, it seems that the freedom to define the conditions to exercise one's profession was also implied and indirectly protected by the Convention, through the ar. 11. From the cooperative theory point of view, mandatory cooperatives are not in line with the definition of cooperatives as voluntarily formed, unions of persons and with the "voluntary membership" cooperative principle, enshrined in the ICA Statement on Cooperative Identity and incorporated in par. 2 and in the Annex of the 2002 International Labour Organization no 193 Recommendation on the Promotion of Cooperatives⁵⁴.

Concerning the impact of the decision on the Greek legal framework, it was observed that the new law on agricultural cooperatives (L. 4384/2016) was passed a few months after the Court's ruling, which prescribed the conversion of mandatory cooperatives into voluntary ones. However, contrary to previous laws, the new law was not only leaving the conversion process up to the cooperators to decide within their general assembly, but it prescribed for such a change to occur as a measure of compliance with a final court's ruling or with the national legislation. The above developments mark the beginning of the end for the mandatory cooperatives in Greece, paving the way for their overall abolishment. Although the consequences of that change cannot be foreseen, research in a particular mandatory cooperative showed that the mandatory status may not have been the most decisive factor for its success, but, instead, its marketing and community strategies that were applied by its administrative organs⁵⁵. In any case, the mandatory cooperatives' conversion into voluntary ones should occur gradually, as long as effective quality control mechanisms are prescribed and can be applied in practice, so that the quality of production will not be put in jeopardy.

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⁵³ ECtHR, *Mytilinaios and Kostakis v Greece*, *ibid*, § 45

⁵⁴ ECtHR, Munkner, 2015. *ibid*, p. 97. International Cooperative Alliance- Principles Committee, *ibid* p.6 :

⁵⁵ Iliopoulos, C. Theodorakopoulou, I. *ibid*, p. 678.

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