



**2011 EUROPEAN COURT OF HUMAN RIGHTS
MOOT COURT COMPETITION**

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STATEMENT OF FACTS

SEMI - FINALS

20 January 2011

FOURTH SECTION

Application no. 30000/08
by the NOSTOS ISLANDERS
against the Kingdom of Scheria
lodged on 20 September 2008

STATEMENT OF FACTS**THE FACTS**

The applicants are natives of, or are descendants of natives of the Nostos Islands. The Kingdom of Scheria has acceded to the ECHR since the early 60's and has enacted legislation giving effect to the ECHR, namely the Human Rights & Fundamental Freedoms Act of 1962 (hereinafter HRFF Act).¹

A. The Circumstances of the Case:

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

Nostos Islands lie beyond Columnae Herculis, in the middle of the Sargasso Sea, comprising mainly of two islands (Nostimo Imar and Algos). As a victory tribute the Islands were ceded to the Kingdom of Scheria, together with Ogygia and other Dependent territories by the State of Aia in 1815. Until 8 October 1965² the Islands were administered as part of the Colony of Ogygia, which is some 1,313 miles to the south west. Record of human inhabitation of the Islands goes back to 1500, although at the beginning of the 19th century there was hardly a population of 600 inhabitants of a more or less floating character. In 1825 a wine company was located on Nostimo Imar offering work to its existing population, who nonetheless considered themselves as permanent residents. Despite working on the wine company the population continued to be rather dependent on fishing and small-scale farming. The Company provided living quarters but the people as they were known generally preferred to build their own thatched cottages. During the following years there was a movement of workers from Ogygia to the Islands under contract to the Company, however by the early 1950's several inhabitants had been born on the island and their families went back several generations, the overall population being a little less than 1,400.

On 8 October 1965, Arete, Queen of Scheria issued an Order establishing the Nostos Islands, formerly part of the Colony of Ogygia, as a *new* colony citing purely administrative reasons. Concomitantly, the Government of Scheria acquired the land and freehold interests held by the Company (that owned most of the property on the islands). Shortly afterwards an agreement was concluded with the State of Aia, according to which the latter should have use of the Islands for defence purposes for an indefinite period. For this purpose the Islands were evacuated during 1966-1967. Some of the inhabitants were prevented from returning to the Islands, while others were deported to Ogygia. In 1967, construction teams from Aia arrived on Nostimo Imar and bulldozed the villages. For all intents and purposes the submission of Scheria in international fora with respect to the Nostos Islands has been that the population of the Islands consisted of migrant workers who had nonetheless been consulted in the process. In 1970, The Nostos Islands Commissioner enacted the Immigration Ordinance 1/1970, according to which entering or

¹Note: the Kingdom of Scheria has yet to ratify Protocol No.4 to the ECHR.

² In accordance with the 1965 Order, the Nostos Islands Commissioner was empowered to "make legislation for the "peace, order and good government of the Islands".

remaining in the territory without a permit was now a criminal offence. None of the Islanders was afforded such a permit.

The islanders suffered dreadful conditions on being uprooted, having lost their homes and livelihoods. At the time there were no resettlement schemes for the Islanders who were by birth citizens of Scheria and Colonies, acquiring also Ogygian citizenship on the latter's independence in 1968. During 1975-78 a cash payment of 100,000 solidi (approximately 300,000 Euros) were paid to the newly independent government of Ogygia by Scheria but by the time it was paid rampant inflation had substantially reduced its anyhow limited value.

In 1980, one of the Islanders instigated legal proceedings in the Courts of Scheria with regard to the lawfulness of the expulsions. In 1982, Scheria's Government made an open offer to settle the claims of the islanders. A settlement was reached and the Government agreed to pay 1,000,000 solidi (approximately 3,000,000 Euros) to the Government of Ogygia, which in turn agreed to put in land the value of 1,000,000 Euros. Through a trust fund that was set up by the Ogygian Government a payment of 1,428 Euros was made to each of the 1400 Islanders. On the receipt of the last tranche of money, all but 12 of the identified islanders or the descendants who refused, had signed or thumb printed renunciation forms in English. It cannot be established that those signing or thumb printing these renunciations had at the time access to legal representation. In any event the applicants stated that they were unaware that the settlement involved any renunciation of their rights to return to their homeland.

In 1995, Odysseas L., one of the Islanders longing for Nostimo Imar, brought an action before Scheria's High Court, challenging the validity of the Immigration Ordinance 1/1970. On 3 March 1998, the Divisional Court in its judgment, delivered by Judge Hermes, noted *inter alia* that none of the islanders owned any land or held any right to permanent use of the land. It went on however to find that the Ordinance was *ultra vires* the 1965 Order, by virtue of which it had been issued, since the power to make legislation for "peace, order and good government" did not permit legislation to exclude the population from the territory. It issued a declaration that the Ordinance was invalid. There was no appeal and a new Ordinance was issued in 2000, providing for the return of the Islanders and their descendants to Algos, while stipulating that Nostimo Imar could only be accessed by those holding a permit. The islanders however were once again excluded from obtaining such permits.

In April 2001, the islanders commenced group litigation against the Attorney-General, to secure compensation for past and continuing wrongs and to seek a declaration of their right to return to Nostimo Imar. However, in his judgment in 2003, Mr. Justice Poseidon concluded that all of the islanders who had accepted money from the Fund and signed a form renouncing further claims would be in abuse if they continued the proceedings. He held that it was generally known in Ogygia at the time that the 1982 Agreement was final and did not consider that they had reasonable prospects of showing that the Government had acted in a morally culpable manner leading to an oppressive transaction from which the claimants should be removed. The court of Appeal refused permission to appeal stating in particular:

"This judgment brings to an end the quest of the displaced inhabitants of the Nostos Islands and their descendants for legal redress against the state directly responsible for expelling them from their homeland. They have not gone without compensation, but what they have received has done little to repair the wrecking of families and communities, to restore their self-respect or to make amends for the underhand official conduct now publicly revealed by the documentary record. Their claim in this action has been not only for damages but for declarations seeking their right to return. The causes of action, however, are geared to the recovery of damages and no separate claims to declaratory relief have been developed before us. It may not be too late to make return possible, but such an outcome is a function of economic resources and political will, not adjudication."

In 2005, Her Majesty the Queen Nausika, in exercise of Her prerogative passed an Order in Council, repealing the 2000 Ordinance and declaring that no person had the right of abode in the territory or the right to enter it except as authorized. Moreover the area was characterized as a “marine park”. Hence save for the military personnel holding permits, none of the Islanders could from now on hope to get to Nostos. Mr Odysseas L. instituted judicial review proceedings seeking to challenge the 2004 Orders barring their return to the islands as unlawful.

In its judgment of 11 May 2006, the Administrative Court upheld his claims, finding that the provisions of the Orders were invalid. The Secretary of State for Foreign and Commonwealth Affairs appealed, but on 23 May 2007, the Court of Appeal dismissed the appeal finding that the prerogative power of colonial governance enjoyed no generic immunity from judicial review and that the permanent exclusion of an entire population from its homeland for reasons unconnected with their collective well-being could not have the character of a valid act of governance. The point was that the Orders in Council negated one of the most fundamental liberties known to human beings, the freedom to return to one’s homeland, however poor and barren the conditions of life and contingent though entry might be on the property rights of others and that they did this for reasons unconnected with the well-being of the people affected.

The Secretary of State obtained leave to appeal to the House of Lords. In its judgment of 22 October 2008, the House of Lords upheld the appeal by three votes to two on the basis that there had been no legitimate expectation for the islanders that they would be allowed to resettle on the Islands. Moreover the Human Rights and Fundamental Freedoms Act had no application to Nostos Islands, as the declaration made in respect of Ogygia under Article 56 of the European Convention lapsed when the latter became independent.³ There was no basis for holding that the prerogative power of the Crown, in exercise of which the 2005 Order was issued, was limited to acts in the interests of the inhabitants or that the right to abode was a fundamental right. Indeed a prerogative Order in Council is primary legislation and takes precedent over the HRFFs Act. In any event, seen in the context of the present day, rather than 1968, the right of abode of the islanders was purely symbolic. None had gone to visit in the four years when the 2000 Ordinance had been in force. It was essentially about the right to protect and it was not unreasonable of the Government to seek to avoid an unauthorized settlement on the islands which could be used as a means of exerting pressure to compel it to fund a resettlement, which according to the House of Lords had been the subtext of the case.

COMPLAINTS

#1 Submitting that the Court’s Jurisdiction is firmly established under Article 1 of the ECHR (a), the applicants complain under Article 3, ECHR for the inhuman treatment they received with regard to the governmental actions of the deportation, the removal and the manner in which it was carried out, the reception conditions on their arrival in Ogygia , the prohibition on their return and the refusal to facilitate return once the prohibition had been declared unlawful(b)

#2 Moreover the applicants complain under Article 8 about the above matters as disclosing violations of their right to respect for private life and home. The original removal was not “in accordance with the law” and the subsequent interferences neither lawful nor necessary in a democratic society (a). The applicants also allege that these matters violated their rights under Article 1 of Protocol No. 1, by both depriving them of their possessions and/or controlling their use.(b)

³The Kingdom of Scheria lodged in 1962 a declaration under former Article 63 (now Article 56) of the ECHR extending the application of the Convention to a number of territories for whose international relations Scheria was responsible, including the Colony of Ogygia, which at the time also included Nostos Islands. As mentioned however Ogygia became independent in 1968.