











# FREEDOM OF RELIGION IN WESTERN THRACE (GREECE)

RESEARCH PAPER SERIES 4

ABTTF

Federation of Western Thrace Turks in Europe

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
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## Content

## Introduction

The Western Thrace is the name of the region stretching out from the Turkish border in North-eastern Greece till the Karasu River, and our minority has been living in the region with its rights recognized by the Lausanne Treaty signed in 1923. From this date onwards, many people of our minority had to leave their birthplaces due to the repressions on our minority the Greek nationalism has declared as "scapegoat". Therefore, the population of our minority today is still about 150 thousand, which counted 129 thousand in the year 1923. You can read the related repressions in the reports of various international human rights organizations. To state some examples here: our minority members cannot get a simple permission to repair their house roofs; they have been forced to live in the forbidden regions, to which the entrance is only possible with passes; because they are from an other ethnic group, they have been permanently facing the threat of losing their citizenship through an administrative decision; or till a few years ago, they were compelled to read books for their education, which were containing statements such as "The human being will step on the moon one day." When we consider all of these and also that our minority, whose ethnic identity is rejected, lives from the agriculture and parallel to that, has a high rate of population increase, the importance and the difficulty of the migration out of the region can be guessed easily.

The Federation of Western Thrace Turks in Europe (ABTTF), which was founded in 1988 by 25 thousand Western Thrace Turks organized under 28 foundations in the Western Europe, where this migration has been experienced, has been struggling since then to introduce and be voice of our minority in Europe and in the world.

As the outcomes of our activities, our country Greece has given some of our citizenship rights back in the last years due to the pressures coming from the European Union, and we are coming out slowly from the second-class citizenship. However, any step could not be taken regarding our minority rights, which is the first condition to continue our existence. In this respect, we would like to mention you some infringements going on

.

## The Problem of the Post of *Mufti* (Highest Religious Authority of a Province/ District)

### *Treaty of Athens, 1913*

*Article 11*

*The life and properties, and the honor, religion, sect and customs of the folks from the places left to Greece, and who will remain under the administration of Greece, will be fully cared and respected, and these folks will possess all kind of civil and political rights like the Greek citizens of Greek origin do.*

*The already founded autonomous establishments of the Muslim community, or the ones which will be founded in the future, and the sub-establishments of these, and the management of their money and properties will diminished by no means, and the relationships of the religious leaders of the Muslim community of the society with the exalted post (Seyhulislamlik - the highest religious post in the Ottoman Empire) having the seat in the capital city Istanbul will be also diminished by no means, and the appointment of the chief Mufti (the highest religious authority of a province/district) will be made by Seyhulislam.*

*Each Mufti will be elected by those Muslim voters who find themselves under the authority realm of the related Mufti.*

*The Chief Mufti will be elected by an election council composed of all Muftis in Greece, and will be appointed among three candidates determined by the King of Greece.*

*The Greek Government will inform through the Greek Embassy in Istanbul the post of Seyhulislam about the election of the Chief Mufti, and the Chief Mufti elected by the Seyhulislam will have the hegemony right and the fatwa power over the other Muftis in order to practice his civil-service duty.*

*The Muftis will have apart from their authorization over the religious matters and the administration and control of the properties of the foundations, the authorization to decide about the conflicts among the Muslims in the subject matters of marriage, divorce, alimony, guardianship, maturity, testament issues, patrimony etc. of the Muslims.*

### *The Protocol Number 3*

*7. The Chief Mufti and Muftis, and the civil servants and servants in their offices will be provided with the same rights and obligations like the Greek civil servants do.*

*8. The Chief Mufti investigates, if the elected Muftis carry all the necessary qualifications determined according to the religious rules.*

*9. The Muftis can only be removed from their posts according to the provisions provided by the Art. 88 of the Constitution of the Greek Kingdom.*

*10. The Chief Mufti, who is obliged to look after the Muslim community and administer the foundations, has also the chief duty to make them to prepare the accounting records through asking them for the financial records.*

## *Treaty of Peace with Turkey Signed at Lausanne, July 24, 1923*

*Section III*

*Protection of Minorities*

*Article 40*

*Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.*

*Article 41*

*As regards public instruction, the Turkish Government will grant in those towns and districts, where a considerable proportion of non-Moslem nationals are resident, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of their own language. This provision will not prevent the Turkish Government from making the teaching of the Turkish language obligatory in the said schools.*

*In towns and districts where there is a considerable proportion of Turkish nationals belonging to non-Moslem minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious, or charitable purposes.*

*The sums in question shall be paid to the qualified representatives of the establishments and institutions concerned.*

*Article 42*

*The Turkish Government undertakes to take, as regards non-Moslem minorities, in so far as concerns their family law or personal status, measures permitting the settlement of these questions in accordance with the customs of those minorities.*

*These measures will be elaborated by special Commissions composed of representatives of the Turkish Government and of representatives of each of the minorities concerned in equal number. In case of divergence, the Turkish Government and the Council of the League of Nations will appoint in agreement an umpire chosen from amongst European lawyers.*

*The Turkish Government undertakes to grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned minorities. All facilities and authorisation will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey, and the Turkish Government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are guaranteed to other private institutions of that nature.*

*Article 45*

*The rights conferred by the provisions of the present Section on the non-Moslem minorities of Turkey will be similarly conferred by Greece on the Moslem minority in her territory.*

***Convention for Protection of Human Rights and Fundamental Freedoms***

*Article 9*

1. *Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*

2. *Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.*

Minority human rights as well as religious rights of Western Thrace Turks in Western Thrace have been violated and are being continously violated. The minority rights of the Western Thrace Turkish Minority were designated by Treaty of Peace of Lausanne of 1923 but Greece, European Union member country insists not to put the related articles into practice.

Military junta that came into power in 1967and minorities living in Greece began to face a lot of problems in the framework of human and democratic rights. During that military junta period, Western Thrace Turkish Minority lost all their basic minority rights that were assured by the treaties signed by Turkey and Greece. That year the foundations and office of Mufti were confiscated by the military junta. After 1974, although democratic system was the ruling power, those foundations and office of Mufti were never able to regain their previous democratic rights.

On 24 December 1990, the President of the Republic, on the proposal of the Council of Ministers and under Article 44 § 1 of the Constitution, adopted a legislative decree by which the manner of selection of the muftis was changed. Previously, the manner of selection of muftis was determined by Article 2345 dated 1920. New selection was in the form of "appointment" by the president of the Republic. On 4 February 1991 Parliament enacted Law no. 1920, thereby retroactively validating the legislative decree of 24 December 1990.

As a result of this decree change, Greece violated the Article 40 of the Treaty of Peace of Lausanne which assures the rights of minorities as stated below;

> *Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.*

Although Greek Church could select their metropolitians and Jews could select their rabbis as well as their administrators, Western Thrace Turkish Minority were not allowed to use their rights that were assured by the Article 40 of the Treaty of Peace of Lausanne as well as the Treaty of Peace of Athens to choose their religious leaders. Ibrahim Şerif and Mehmet Emin Aga, who were elected by the Western Thrace Turkish Minority voters, were tried lots of times and sentenced to prison.

Human rights violations in Western Thrace were not only expressed by the minority members but also verified by European Court of Human Rights and Helsinki Watch.

During 1990's when the mutual accusation between Turkey and Greece were harsh, human rights violations aganist Western Thrace Turkish Minority members in Greece were on the agenda of Helsinki Watch and a report was prepared after the investigations in Greece. In the scope of that report, religious freedom in Greece was evaluated and the following measures were advised to improve the existing condition;

"Property ownership of Turkish Minority is to be ensured. It shall be guaranteed that they have the equal civil and political rights to build and repair their mosques and schools"

"Turkish Minority shall have the religious freedom to elect their own muftis and to control the funds of their foundations"

Above are the advises of the Helsinki Watch to Greece and these advises are repeated by the European Court of Human Rights that sentences Greece several times due to its violations of basic minority rights. Up to now, Greece has five cases that were suited by the elected Muftis and European Court of Human Rights declared five cases to be admissible. Judgments are to be found at the following pages.

**Elected Mufti of Komotini, İbrahim Şerif**

He was born in 1951 in Hasköy. He completed his primary and high school education at Konya vocational religious high school and he studied at İstanbul Higher Institute for islamic Studies He returned back to Western Thrace and he worked as a religious book publisher and also as a preacher.

In 1990, he announced his candidacy for deputyship with deceased Sadık Ahmet and Ismail Rodoplu. Greek Government did not accept his candidacy and the justification was "**missing document**". After his candidacy was not accepted, he was sentenced to 18 months. He was in prison for 3 months. He won the suit that he brought aganist Greece at European Court of Human Rights, Greece was accused of violating the freedom of religion and conscience.

He was elected as Mufti in 1991 and he serves as the elected Mufti since then. He is the chairman of the Western Thrace Turkish Minority Advisory Board, Supreme Court of the Western Thrace Turkish Minority.

**Elected Mufti of Xanthi, Mehmet Emin Aga**

He was born in 1932 in Xanthi and deceased on 9 September 2006 in Xanthi. .

After he completed his primary education in 1945, he graduated Madrasa of Komotini in 1954 and he worked at Madrasa of Komotini for some time. He was accused of instilling the "Turkish Identity" to the students at Madrasa in 1968 and he was judged at military court. He worked as registrar at office of Mufti of Xanthi.

After decease of his father, Mustafa Hilmi in 1990, he worked as viceroy at office of Mufti of Xanthi. On 8 August 1990 he was elected as the Mufti by the Turkish Minority voters at the elections held in mosques. Criminal proceedings were instituted against the him for having usurped the functions of a minister of a "known religion". He was sentenced to hundreds of

months. He was in prison for 6 months in 1994 but then released due to his poor health conditions.

Mehmet Emin Aga won all four of the cases that he brought aganist Greece at the European Court of Human Rights. European Court of Human Rights sentenced Greece due to violating the freedom of religion and conscience as well as exceeding the optimal time limit of hearing.

# Judgments about Elected Mufti of Komotini, İbrahim Şerif

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

**CASE OF SERIF v. GREECE**

*(Application no. 38178/97)*

JUDGMENT

STRASBOURG

14 December 1999

**In the case of Serif v. Greece,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr M. FISCHBACH, *President*,
Mr C.L. ROZAKIS,
Mr B. CONFORTI,
Mr P. LORENZEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A.B. BAKA,

Mr E. LEVİTS, *judges*,
and Mr E. FRİBERGH, *Section Registrar*,
Having deliberated in private on 2 December 1999,
Delivers the following judgment, which was adopted on that date:

## PROCEDURE

1. The case originated in an application (no. 38178/97) against the Hellenic Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Greek national, Mr Ibraim Serif ("the applicant"), on 29 September 1997. The applicant was represented by his counsel. The Greek Government ("the Government") were represented by their Agent, Mr A. Komissopoulos, President of the State Legal Council.

The applicant complained, *inter alia*, that his conviction for usurping the functions of a minister of a "known religion" and publicly wearing the dress of such a minister amounted to a violation of his rights under Articles 9 and 10 of the Convention.

2. On 12 January 1998 the Commission decided to give notice of the application to the Government and to invite them to submit observations in writing on the merits.

The Government submitted their observations on 30 April 1998, to which the applicant replied on 3 July 1998.

3. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998, and in accordance with Article 5 § 2 thereof, the application was examined by the Court.

4. In accordance with Rule 52 § 1 of the Rules of Court, the President of the Court, Mr L. Wildhaber, assigned the case to the Second Section. The Chamber constituted within that Section included *ex officio* Mr C.L. Rozakis, the judge elected in respect of Greece (Article 27 § 2 of the Convention and Rule 26 § 1 (a)), and Mr M. Fischbach, Vice-President of the Section (Rules 13 and 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr B. Conforti, Mr P. Lorenzen, Mrs M. Tsatsa-Nikolovska, Mr A.B. Baka and Mr E. Levits (Rule 26 § 1 (b)).

5. On 17 November 1998 the Chamber decided to invite the parties to a hearing on admissibility and merits. The hearing took place on 26 January 1999.

There appeared before the Court:

(a) *for the Government*
Mr G. KANELLOPOULOS, Senior Adviser,
State Legal Council, *Delegate of the Agent*,
Mrs M. TELALİAN, Deputy Legal Adviser,
Ministry of Foreign Affairs,
Mr V. KYRİAZOPOULOS, Legal Assistant,
State Legal Council, *Advisers*;

(b) *for the applicant*

Mr T. AKİLLİOGLU,
Mr S. EMİN, *Counsel*.

The applicant was also present.

6. On 26 January 1998 the Chamber declared admissible the applicant's complaints under Articles 9 and 10 of the Convention. It declared the remainder of the application inadmissible[1].

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

7. The applicant is a Greek citizen, born in 1951. He is a theological school graduate and resides in Komotini.

### A. The background of the case

8. In 1985 one of the two Muslim religious leaders of Thrace, the Mufti of Rodopi, died. The State appointed a mufti *ad interim*. When he resigned, a second mufti *ad interim*, Mr M.T., was appointed. On 6 April 1990 the President of the Republic confirmed M.T. in the post of Mufti of Rodopi.

9. In December 1990 the two independent Muslim Members of Parliament for Xanthi and Rodopi requested the State to organise elections for the post of Mufti of Rodopi, as the law then in force provided. They also requested that elections be organised by the State for the post of the other Muslim religious leader of Thrace, the Mufti of Xanthi. Having received no reply, the two independent MPs decided to organise elections themselves at the mosques on Friday 28 December 1990, after prayers.

10. On 24 December 1990 the President of the Republic, on the proposal of the Council of Ministers and under Article 44 § 1 of the Constitution, adopted a legislative decree by which the manner of selection of the muftis was changed.

11. On 28 December 1990 the applicant was elected Mufti of Rodopi by those attending Friday prayers at the mosques. Together with other Muslims, he challenged the lawfulness of M.T.'s appointment before the Supreme Administrative Court. These proceedings are still pending.

12. On 4 February 1991 Parliament enacted Law no. 1920, thereby retroactively validating the legislative decree of 24 December 1990.

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1 . *Note by the Registry*. The Court's decision is obtainable from the Registry.

### B. The criminal proceedings against the applicant

13. The Rodopi public prosecutor instituted criminal proceedings against the applicant under Articles 175 and 176 of the Criminal Code for having usurped the functions of a minister of a "known religion" and for having publicly worn the dress of such a minister without having the right to do so. On 8 November 1991 the Court of Cassation, considering that there might be disturbances in Rodopi, decided, under Articles 136 and 137 of the Code of Criminal Procedure, that the case should be heard in Salonika.

14. On 5 March 1993 the Salonika public prosecutor summoned the applicant to appear before the Salonika Criminal Court sitting at first instance and composed of a single judge to be tried for the offences provided for under Articles 175 and 176 of the Criminal Code.

15. The applicant was tried by the Salonika Criminal Court on 12 December 1994. He was represented by counsel. The court heard a number of prosecution and defence witnesses. Although one witness attested that the applicant had taken part in religious ceremonies, none of the witnesses stated that the applicant had purported to discharge the judicial functions with which muftis are entrusted in Greek law. Moreover, a number of witnesses attested that no official dress for muftis existed. However, one prosecution witness declared that, although in principle all Muslims were allowed to wear the black gown in which the applicant had been appearing, according to local custom this had become the privilege of muftis.

16. On 12 December 1994 the court found the applicant guilty of the offences provided for under Articles 175 and 176 of the Criminal Code. According to the court, these offences had been committed between 17 January and 28 February 1991, a period during which the applicant had discharged the entirety of the functions of the Mufti of Rodopi by officiating at weddings, "christening" children, preaching and engaging in administrative activities. In particular, the court found that on 17 January 1991 the applicant had issued a message to his fellow Muslims about the religious significance of the Regaib Kandil feast, thanking them at the same time for his election as mufti. On 15 February 1991, in the capacity of a mufti, he had attended the inauguration of the hall of the "Union of the Turkish Youth of Komotini" wearing clothes which, according to Muslim custom, only muftis were allowed to wear. On 27 February 1991 he had issued another message on the occasion of the Berat Kandil feast. Finally, on 28 February 1991 and in the same capacity, he had attended a religious gathering of 2,000 Muslims at Dokos, a village in Rodopi, and had delivered the keynote speech. Moreover, the court found that the applicant had repeatedly worn the official dress of a mufti in public. The court imposed on the applicant a commutable sentence of eight months' imprisonment.

17. The applicant appealed. The hearing before the Salonika Criminal Court sitting on appeal and composed of three judges was adjourned on 24 May 1995 and 30 April 1996 because, *inter alia*, M.T., the appointed mufti, who had been called by the prosecution, did not appear to testify. M.T. was fined. The appeal was heard on 21 October 1996. In a decision issued on the same date the court upheld the applicant's conviction and imposed on him a sentence of six months' imprisonment to be commuted to a fine.

18. The applicant paid the fine and appealed on points of law. He submitted, *inter alia*, that the appellate court had interpreted Article 175 of the Criminal Code erroneously when it considered that the offence was made out even where a person claimed to be a minister of a "known religion" without, however, discharging any of the functions of the minister's office. Moreover, the court had been wrong to disregard expert testimony that no official mufti dress existed. The applicant had the right under Article 10 of the Convention to make the

statements for which he had been convicted. "The office of the mufti represented the free manifestation of the Muslim religion", the Muslim community had the right under the Treaty of Peace of Athens of 1913 to elect its muftis and, therefore, his conviction violated Articles 9 and 14 of the Convention.

19. On 2 April 1997 the Court of Cassation dismissed the applicant's appeal. It considered that the offence in Article 175 of the Criminal Code was made out "where somebody appeared in public as a minister of a 'known religion' and discharged the functions of the minister's office, including any of the administrative functions pertaining thereto". The court considered that the applicant had committed this offence because he had behaved and appeared in public as the Mufti of Rodopi, wearing the dress which, in people's minds, was that of a mufti. In particular, the court referred to the incidents of 17 January and 15, 27 and 28 February 1991. The Court of Cassation did not specifically address the applicant's arguments under Articles 9, 10 and 14 of the Convention.

## II. RELEVANT LAW AND PRACTICE

### A. International treaties

20. Article 11 of the Treaty of Peace of Athens between Greece and others, on the one hand, and the Ottoman Empire, on the other, which was concluded on 17 May 1913 and ratified by the Greek parliament by a law published in the Official Gazette on 14 November 1913, provides as follows:

(Translation)

> "The life, property, honour, religion and customs of the inhabitants of the districts ceded to Greece who will remain under Greek administration shall be scrupulously respected.
>
> They shall enjoy in full the same civil and political rights as the subjects of Greek origin. Muslims shall be entitled to freedom and to practise their religion openly.
>
> ...
>
> There shall be no interference with the autonomy or hierarchical organisation of existing or future Muslim communities or in the management of their funds or property.
>
> ...
>
> Each mufti shall be elected by Muslim voters in his own constituency.
>
> ...
>
> In addition to their authority in purely religious matters and in the supervision of the management of *vacouf* property, the muftis shall have jurisdiction as between Muslims in the spheres of marriage, divorce, maintenance (*nefaca*), guardianship, administration, capacity of minors, Islamic wills and succession to the office of *mutevelli* (*Tevliét*).
>
> Judgments delivered by the muftis shall be enforced by the competent Greek authorities.
>
> As regards successions, any interested Muslim party may with prior agreement submit a dispute to the mufti as arbitrator. Unless the agreement expressly provides otherwise, all avenues of appeal to the Greek courts shall lie against an arbitral award."

21. On 10 August 1920 Greece concluded two treaties with the principal Allied Powers at Sèvres. By the first treaty the Allied Powers transferred to Greece all the rights and titles which they had acquired over Thrace by virtue of the peace treaty they had signed with Bulgaria at Neuilly-sur-Seine on 27 November 1919. The second treaty concerned the protection of minorities in Greece. Article 14 § 1 of the second treaty provides as follows:

> "Greece agrees to take all necessary measures in relation to the Muslims to enable questions of family law and personal status to be regulated in accordance with Muslim usage."

22. On 30 January 1923 Greece and Turkey signed a treaty for the exchange of populations. On 24 July 1923 Greece and others, on the one hand, and Turkey, on the other, signed the Treaty of Peace of Lausanne. Articles 42 and 45 of this treaty gave the Muslim minority of Greece the same protection as Article 14 § 1 of the Sèvres Treaty for the Protection of Minorities. On the same day Greece signed a protocol with the principal Allied Powers bringing into force the two treaties concluded at Sèvres on 10 August 1920. The Greek parliament ratified the three above-mentioned treaties by a law published in the Official Gazette on 25 August 1923.

23. In its decision no. 1723/80 the Court of Cassation considered that it was obliged to apply Islamic law in certain disputes between Muslims by virtue of the Treaty of Peace of Athens of 1913, the Treaty for the Protection of Minorities of Sèvres of 1920 and the Treaty of Peace of Lausanne of 1923.

### B. The legislation on the muftis

24. Law no. 2345/1920 provided that the muftis, in addition to their religious functions, had competence to adjudicate on family and inheritance disputes between Muslims to the extent that these disputes were governed by Islamic law. It also provided that the muftis were directly elected by the Muslims who had the right to vote in the national elections and who resided in the prefectoral district in which the muftis would serve. The elections were to be organised by the State and theological school graduates had the right to be candidates. Section 6(8) of the Law provided for the promulgation of a royal decree to make detailed arrangements for the elections of the muftis.

25. Such a decree was never promulgated. The State appointed a mufti in Rodopi in 1920 and another one in March 1935. In June 1935 a mufti *ad interim* was appointed by the State. In the course of the same year the State appointed a regular mufti. This mufti was replaced by another in 1941, when Bulgaria occupied Thrace. He was reappointed by the Greek State in 1944. In 1948 the Greek authorities appointed a mufti *ad interim* until 1949, when a regular mufti was appointed. The latter served until 1985, when he died.

26. Under the legislative decree of 24 December 1990 the functions and qualifications of the muftis remain largely unchanged. However, provision is made for the appointment of the muftis by presidential decree following a proposal by the Minister of Education who, in turn, must consult a committee composed of the local prefect and a number of Muslim dignitaries chosen by the State. The legislative decree expressly abrogates Law no. 2345/1920 and provides that it should be ratified by law in accordance with Article 44 § 1 of the Constitution.

27. Law no. 1920/1991 retroactively validated the legislative decree of 24 December 1990.

### C. Legislative decrees under Article 44 § 1 of the Constitution

28. Article 44 § 1 of the Constitution provides as follows:

> "In exceptional circumstances, when an extremely urgent and unforeseeable need arises, the President of the Republic may, on the proposal of the Council of Ministers, adopt legislative acts. These acts must be submitted to Parliament for approval ... within forty days …"

### D. Articles 175 and 176 of the Criminal Code

29. Article 175 of the Criminal Code provides as follows:

> "1. A person who intentionally usurps the functions of a State or municipal official shall be liable to a term of imprisonment not exceeding one year or a fine.
>
> 2. This provision also applies where a person usurps the functions of a lawyer or a minister of the Greek Orthodox Church or another known religion."

30. The Court of Cassation considered that this provision applied in the case of a former priest of the Greek Orthodox Church who continued to wear the priests' robes (judgment no. 378/80). The priest in question had been defrocked after joining the Old Calendarists, a religious movement formed by Greek Orthodox priests who wanted the Church to maintain the Julian calendar. In judgment no. 454/66 the Court of Cassation considered that the offence in Article 175 of the Criminal Code was also committed by a person who purported to discharge the administrative functions of a priest. In judgments nos. 140/64 and 476/71 the Court of Cassation applied Article 175 of the Code to cases of persons who had purported to exercise the religious functions of an Orthodox priest by conducting services, "christening" children, etc.

31. Article 176 of the Criminal Code provides as follows:

> "A person who publicly wears the dress or the insignia of a State or municipal official or of a minister of a religion referred to in Article 175 § 2 without having the right to do so ... shall be liable to a term of imprisonment not exceeding six months or a fine."

### E. The legislation on ministers of "known religions"

32. Ministers of the Greek Orthodox Church and other "known religions" enjoy a number of privileges under domestic law. *Inter alia*, the religious weddings they celebrate produce the same legal effects as civil weddings and they are exempt from military service.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

33. The applicant complained that his conviction amounted to a violation of Article 9 of the Convention, which provides as follows:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

34. The Government denied that there had been any such breach. In their view, there had been no interference with the applicant's right to freedom of religion. Even if there had been an interference, the Government argued that it would have been justified under the second paragraph of Article 9 of the Convention.

35. The Court must consider whether the applicant's Article 9 rights were interfered with and, if so, whether such interference was "prescribed by law", pursued a legitimate aim and was "necessary in a democratic society" within the meaning of Article 9 § 2 of the Convention.

### A. Existence of an interference

36. The applicant argued that his conviction amounted to an interference with his right to be free to exercise his religion together with all those who turned to him for spiritual guidance.

37. The Government submitted that there had been no interference with the applicant's right to freedom of religion because Article 9 of the Convention did not guarantee for the applicant the right to impose on others his understanding as to Greece's obligations under the Treaty of Peace of Athens.

38. The Court recalls that, while religious freedom is primarily a matter of individual conscience, it also includes, *inter alia*, freedom, in community with others and in public, to manifest one's religion in worship and teaching (see, *mutatis mutandis*, the Kokkinakis v. Greece judgment of 25 May 1993, Series A no. 260-A, p. 17, § 31).

39. The Court further recalls that the applicant was convicted for having usurped the functions of a minister of a "known religion" and for having publicly worn the dress of such a minister without having the right to do so. The facts underlying the applicant's conviction, as they transpire from the relevant domestic court decisions, were issuing a message about the religious significance of a feast, delivering a speech at a religious gathering, issuing another message on the occasion of a religious holiday and appearing in public wearing the dress of a religious leader. In these circumstances, the Court considers that the applicant's conviction amounts to an interference with his right under Article 9 § 1 of the Convention, "in community with others and in public …, to manifest his religion … in worship [and] teaching".

### B. "Prescribed by law"

40. The Government submitted that the applicant's conviction was provided by law, namely Articles 175 and 176 of the Criminal Code. Given the manner in which these provisions had been interpreted by the courts, the outcome of the proceedings against the applicant was foreseeable. In the Government's view, the issue of whether the applicant's conviction was prescribed by law was not related to Law no. 2345 on the election of the

muftis or the Treaty of Peace of Athens. In any event, the Government argued that Law no. 2345 had fallen into disuse. Moreover, the provisions of the Treaty of Peace of Athens, which had been concluded when Thrace was not part of Greece, became devoid of purpose after the compulsory exchange of populations in 1923. This was when Greece exchanged all the Muslims who were living on the territories in its possession when the Treaty of Peace of Athens had been concluded. In the alternative, the Government argued that the provisions of the Treaty of Peace of Athens had been superseded by the provisions of the Treaty of Sèvres for the Protection of Minorities in Greece and the Treaty of Peace of Lausanne, and these treaties made no provision for the election of the muftis.

41. The applicant disagreed. He considered that the Treaty of Peace of Athens remained in force. The Greek Prime Minister had accepted that at the Diplomatic Conference leading to the 1923 Treaty of Peace of Lausanne. Moreover, the Court of Cassation had confirmed the continued validity of the Treaty of Peace of Athens and legal scholars held the same view. The Muslims had never accepted the abrogation of Law no. 2345.

42. The Court does not consider it necessary to rule on the question whether the interference in issue was "prescribed by law" because, in any event, it is incompatible with Article 9 on other grounds (see the Manoussakis and Others v. Greece judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1362, § 38).

### C. Legitimate aim

43. The Government argued that the interference served a legitimate purpose. By protecting the authority of the lawful mufti the domestic courts sought to preserve order in the particular religious community and in society at large. They also sought to protect the international relations of the country, an area over which States exercise unlimited discretion.

44. The applicant disagreed.

45. The Court accepts that the interference in question pursued a legitimate aim under Article 9 § 2 of the Convention, namely "to protect public order". It notes in this connection that the applicant was not the only person claiming to be the religious leader of the local Muslim community. On 6 April 1990 the authorities had appointed another person as Mufti of Rodopi and the relevant decision had been challenged before the Supreme Administrative Court.

### D. "Necessary in a democratic society"

46. The Government submitted that the interference was necessary in a democratic society. In many countries, the muftis were appointed by the State. Moreover, muftis exercised important judicial functions in Greece and judges could not be elected by the people. As a result, the appointment of a mufti by the State could not in itself raise an issue under Article 9.

47. Moreover, the Government submitted that the Court of Cassation had not convicted the applicant simply because he had appeared in public as the mufti. The court considered that the offence in Article 175 was made out where somebody actually discharged the functions of a religious minister. The court also considered that the acts that the applicant engaged in fell within the administrative functions of a mufti in the broad sense of the term. Given that there were two muftis in Rodopi at the time, the courts had to convict the spurious one in order to avoid the creation of tension among the Muslims, between the Muslims and Christians and

between Turkey and Greece. The applicant had questioned the legality of the acts of the lawful mufti. In any event, the State had to protect the office of the mufti and, even if there had not existed a lawfully appointed mufti, the applicant would have had to be punished. Finally, the "election" of the applicant had been flawed because it had not been the result of a democratic procedure and the applicant had been used by the local Muslim MP for party political purposes.

48. The applicant considered that his conviction was not necessary in a democratic society. He pointed out that the Christians and Jews in Greece had the right to elect their religious leaders. Depriving the Muslims of this possibility amounted to discriminatory treatment. The applicant further contended that the vast majority of Muslims in Thrace wanted him to be their mufti. Such an interference could not be justified in a democratic society, where the State should not interfere with individual choices in the field of personal conscience. His conviction was just one aspect of the policy of repression applied by the Greek State *vis-à-vis* the Turkish-Muslim minority of western Thrace.

49. The Court recalls that freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. It is true that in a democratic society it may be necessary to place restrictions on freedom of religion to reconcile the interests of the various religious groups (see the Kokkinakis judgment cited above, pp. 17 and 18, §§ 31 and 33). However, any such restriction must correspond to a "pressing social need" and must be "proportionate to the legitimate aim pursued" (see, among others, the Wingrove v. the United Kingdom judgment of 25 November 1996, *Reports* 1996-V, p. 1956, § 53).

50. The Court also recalls that the applicant was convicted under Articles 175 and 176 of the Criminal Code, which render criminal offences certain acts against ministers of "known religions". The Court notes in this connection that, although Article 9 of the Convention does not require States to give legal effect to religious weddings and religious courts' decisions, under Greek law weddings celebrated by ministers of "known religions" are assimilated to civil ones and the muftis have competence to adjudicate on certain family and inheritance disputes between Muslims. In such circumstances, it could be argued that it is in the public interest for the State to take special measures to protect from deceit those whose legal relationships can be affected by the acts of religious ministers. However, the Court does not consider it necessary to decide this issue, which does not arise in the applicant's case.

51. The Court notes in this connection that, despite a vague assertion that the applicant had officiated at wedding ceremonies and engaged in administrative activities, the domestic courts that convicted him did not mention in their decisions any specific acts by the applicant with a view to producing legal effects. The domestic courts convicted the applicant on the following established facts: issuing a message about the religious significance of a feast, delivering a speech at a religious gathering, issuing another message on the occasion of a religious holiday and appearing in public in the dress of a religious leader. Moreover, it has not been disputed that the applicant had the support of at least part of the Muslim community in Rodopi. However, in the Court's view, punishing a person for merely acting as the religious leader of a group that willingly followed him can hardly be considered compatible with the demands of religious pluralism in a democratic society.

52. The Court is not oblivious of the fact that in Rodopi there existed, in addition to the applicant, an officially appointed mufti. Moreover, the Government argued that the applicant's conviction was necessary in a democratic society because his actions undermined

the system put in place by the State for the organisation of the religious life of the Muslim community in the region. However, the Court recalls that there is no indication that the applicant attempted at any time to exercise the judicial and administrative functions for which the legislation on the muftis and other ministers of "known religions" makes provision. As for the rest, the Court does not consider that, in democratic societies, the State needs to take measures to ensure that religious communities remain or are brought under a unified leadership.

53. It is true that the Government argued that, in the particular circumstances of the case, the authorities had to intervene in order to avoid the creation of tension among the Muslims in Rodopi and between the Muslims and the Christians of the area as well as Greece and Turkey. Although the Court recognises that it is possible that tension is created in situations where a religious or any other community becomes divided, it considers that this is one of the unavoidable consequences of pluralism. The role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other (see, *mutatis mutandis*, the Plattform "Ärzte für das Leben" v. Austria judgment of 21 June 1988, Series A no. 139, p. 12, § 32). In this connection, the Court notes that, apart from a general reference to the creation of tension, the Government did not make any allusion to disturbances among the Muslims in Rodopi that had actually been or could have been caused by the existence of two religious leaders. Moreover, the Court considers that nothing was adduced that could warrant qualifying the risk of tension between the Muslims and Christians or between Greece and Turkey as anything more than a very remote possibility.

54. In the light of all the above, the Court considers that it has not been shown that the applicant's conviction under Articles 175 and 176 of the Criminal Code was justified in the circumstances of the case by "a pressing social need". As a result, the interference with the applicant's right, in community with others and in public, to manifest his religion in worship and teaching was not "necessary in a democratic society …, for the protection of public order" under Article 9 § 2 of the Convention. There has, therefore, been a violation of Article 9 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

55. The applicant complained that, since he had been convicted for certain statements he had made and for wearing certain clothes in public, there had also been a violation of Article 10 of the Convention, which provides as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers …
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

56. The Government argued that there had been no violation because the applicant had not been punished for expressing certain views but for usurping the functions of a mufti.

57. Given its finding that there has been a violation of Article 9 of the Convention, the Court does not consider it necessary to examine whether Article 10 was also violated, because no separate issue arises under the latter provision.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

59. The applicant claimed repayment of the fine he had paid as a result of his conviction, which was approximately 700,000 drachmas (GRD). He also claimed GRD 10,000,000 for non-pecuniary damage.

60. The Government did not accept these claims.

61. The Court recalls its finding that the applicant's conviction amounted to a violation of Article 9 of the Convention. It therefore awards the applicant as compensation for pecuniary damage the equivalent of the fine he had to pay, namely GRD 700,000. The Court further considers that, as a result of the above violation, the applicant has suffered non-pecuniary damage for which the finding in this judgment does not afford sufficient satisfaction. Making its assessment on an equitable basis, the Court awards the applicant GRD 2,000,000 in this respect.

### B. Costs and expenses

62. The applicant did not make any claim in respect of costs and expenses.

63. The Court, having regard to the above and to the fact that the applicant had the benefit of legal aid in the proceedings before it, does not consider it appropriate to make an award in this connection.

### C. Default interest

64. According to the information available to the Court, the statutory rate of interest applicable in Greece at the date of adoption of the present judgment is 6% per annum.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 9 of the Convention;

2. *Holds* that no separate issue arises under Article 10 of the Convention;

3. *Holds* that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 2,700,000 (two million seven hundred thousand) drachmas for damage, and that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 14 December 1999.

Erik FRIBERGH
President

Marc FISCHBACH Registrar

# Judgments about Elected Mufti of Xanthi, Mehmet Emin Aga

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

**CASE OF AGGA v. GREECE**

**(Application no. 37439/97)**

JUDGMENT

STRASBOURG

25 January 2000

**FINAL**

*25/04/2000*

[This judgment is subject to editorial revision before its reproduction in final form in the official reports of selected judgments and decisions of the Court.]

**In the case of Agga v. Greece**,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr M. FISCHBACH, *President*,
Mr C. ROZAKIS,
Mr G. BONELLO,

Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A.B. BAKA,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 13 January 2000,

Delivers the following judgment, which was adopted on that date:

## PROCEDURE

1. The case originated in an application against Greece lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Fundamental Rights and Freedoms ("the Convention") by a Greek national, Mr Mehmet Agga, on 5 August 1997. The application was registered on 22 November 1997 under file no. 37439/97. The applicant is represented by Mr S. Emin, a lawyer practising in Komotini, and Mr T. Akillioglu, a lawyer practising in Ankara and the Government by Mr V. Kyriazopoulos of the Legal Council of the State, Acting Agent.

The applicant complained, *inter alia*, that, contrary to Article 6 § 1 of the Convention, criminal proceedings brought against him had not been heard within a reasonable time.

2. On 3 December 1997 the Commission (First Chamber) decided to give notice of the application to the respondent Government and invited them to submit their observations on the merits.

The Government submitted their observations on 24 February 1998, to which the applicant replied on 27 April 1998.

3. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998 and in accordance with the provisions of Article 5 § 2 thereof, the case was transferred to the Court.

4. In accordance with Rule 52 § 1 of the Rules of Court the President of the Court, Mr L. Wildhaber, assigned the case to the Second Section. The Chamber constituted within the Section included *ex officio* Mr C. Rozakis, the judge elected in respect of Greece (Article 27 § 2 of the Convention and Rule 26 § 1 (a) of the Rules of Court), and Mr M. Fischbach, the Vice-President of the Section (Rules 13 and 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr G. Bonello, Mrs. V. Strážnická, Mr P. Lorenzen, Mr A. Baka and Mr E. Levits (Rule 26 § 1 (b)). Subsequently Mrs M. Tsatsa-Nikolovska replaced Mr Levits who was unable to take part in the further consideration of the case (Rule 24 § 5 (b)).

5. On 24 November 1998, the Chamber declared admissible the applicant's complaint that the criminal proceedings against him had been unreasonably lengthy. It declared the remainder of the application inadmissible[1].

[1] The text of the Court's decision is obtainable from the Registry.

## AS TO THE FACTS

6. The applicant is a Greek national, born in 1932 and resident in Xanthi.

7. The applicant was a candidate in the parliamentary elections of 18 June 1989. On 9 June 1989 Mr TOB complained to the police that the applicant had promised him a sum of money in exchange for his support in the elections.

8. On 13 June 1989 the public prosecutor of Xanthi instituted criminal proceedings against the applicant for attempting to bribe a voter. On 26 July 1989 the prosecutor summoned the applicant to appear before the three-member first instance criminal court (*trimeles plimmeliodikio*) of Xanthi on 12 September 1989 to be tried on this charge.

9. On 12 September 1989 the applicant was ill and the hearing was adjourned until 21 November 1989. On that date the hearing was adjourned until 9 January 1990 because the clerk of the court, following the instructions of his trade union, refused to work overtime. On 9 January 1990 three prosecution witnesses failed to appear. They were fined and the hearing was adjourned until 20 February 1990. On that date the applicant asked for an adjournment because he was ill. The hearing was adjourned until 19 June 1990. On 19 June 1990 TOB failed to appear. He was fined and the hearing was adjourned until 18 September 1990. On 18 September 1990 a further adjournment was ordered until 5 March 1991 because of the "work to rule" policy of the clerks of the court, according to which the clerks refused to work overtime.

10. The applicant was tried on 5 March 1991. He was found guilty and received a suspended sentence of four months' imprisonment. The applicant and the public prosecutor appealed. The case-file was transferred to the public prosecutor of the Court of Appeal of Thrace on 19 March 1991 who fixed a hearing for both appeals for 9 January 1995.

11. However, on that date the three-member court of appeal (*trimeles efetio*) of Thrace had to adjourn the hearing until 6 December 1995 because of the "work to rule" industrial action of the clerks of the court. On 6 December 1995 the prosecution witnesses did not appear. They were fined and the hearing was adjourned until 4 March 1996.

12. The appeals were finally heard on 4 March 1996. The court heard TOB and two other prosecution witnesses who had heard TOB on the radio denouncing the applicant's attempt to bribe him. It also heard the applicant and a defence witness. In a decision delivered on the same day, the court of appeal upheld the applicant's conviction and sentence.

13. On 4 November 1996 the applicant appealed to the Court of Cassation complaining, *inter alia*, of a violation of Article 6 of the Convention because the court of appeal had seriously delayed the proceedings.

14. On 18 February 1997 the Court of Cassation rejected the applicant's appeal considering, *inter alia*, that Article 6 of the Convention did not create any grounds of appeal in cassation other than the grounds provided for in the Code of Criminal Procedure.

## AS TO THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

15. The applicant complained of the length of the criminal proceedings instituted against him. He alleged a violation of Article 6 § 1 of the Convention, which provides:

"In the determination ... of any criminal charge against him, everyone is entitled to a … hearing within a reasonable time by [a] … tribunal…"

16. The Government contested that submission on the ground that the delays in the proceedings had been caused by either the applicant's own conduct or other events for which the State was not responsible, such as the failure of certain witnesses to appear and a strike by the lawyers.

### A. Period to be taken into consideration

17. The relevant period began at the latest on 26 July 1989, when the public prosecutor of Xanthi informed the applicant of the proceedings against him (see paragraph 8 above). It ended on 18 February 1997 when the applicant's appeal in cassation was rejected (see paragraph 14 above).

18. It therefore lasted seven years, six months and twenty-two days.

### B. Reasonableness of the length of the proceedings

19. According to the Court's case-law, the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case (see, among other authorities, the Pélissier et Sassi v. France judgment of 25 March 1999, to be published in *Reports of Judgments and Decisions* 1999, § 67, and the Philis v. Greece (no. 2) judgment of 27 June 1997, *Reports* 1997-IV, p. 1083, § 35).

20. The Government submitted that there had not been any delays in the pre-trial phase of the proceedings. The proceedings before the first instance court had lasted approximately 18 months, which was reasonable. The applicant was responsible for the adjournments of 12 September 1989 and 20 February 1990. Moreover, the State could not be held responsible for the adjournments of 9 January 1990 and 19 June 1990, which had been caused by the absence of certain witnesses who had been properly summoned and who had been fined for their failure to appear. The industrial action of the clerks had only caused delays of seven months and five days. As regards the second instance proceedings, the Government contended that the delay in the fixing of the first hearing was related to the number of cases pending before the courts as a result of the lawyers' strike, an event for which the State was not responsible. Between the first and second adjournment there had been a delay of eleven months which was reasonable given the effects of the lawyers' strike. The second adjournment had had to be ordered because the witnesses had not been present again and there had been no significant delays after that. Finally, the Government pointed out that the cassation proceedings had been concluded within three and a half months.

21. The applicant submitted that the State was responsible for the delays arising from the absence of prosecution witnesses. The applicant himself was responsible for delays of six months and eight days. However, the reason for his failure to attend the hearing had been an illness caused by acute anxiety related to the criminal proceedings against him. In his view, the State should have taken measures to deal with the structural problems underlying the court clerks' industrial action. In any event, adjourned cases had to be given priority and not be placed at the end of the list. Finally, the applicant argued that the delays in the second instance proceedings were entirely unreasonable.

22. The Court considers that the case was not complex. Only five witnesses were heard on appeal.

23. As to the applicant's conduct, the Court notes that the first instance hearings of 12 September 1989 and 20 February 1990 were adjourned at the applicant's request because he was ill. This resulted in delays of six months.

24. As to the conduct of the authorities, the Court notes that the first instance hearing was adjourned on 21 November 1989, 9 January 1990, 19 June 1990 and 18 September 1990 as a result of the failure of prosecution witnesses to appear and industrial action by the clerks of the court. The Court considers that the State is responsible for the resultant delays of approximately one year.

25. The Court also notes that there was a period of inactivity of approximately three years and ten months between the date when the case-file was transferred to the public prosecutor of the court of appeal and the first adjournment of the appeal hearing. The Government, in order to justify this delay, make reference to a strike by the lawyers. The Court notes, however, that they have not provided any information about this strike. Even assuming that such a strike took place and that the State is not responsible for the delays resulting therefrom (*cf.* Eur. Court HR, Pafitis and others v. Greece judgment of 26 February 1998, *Reports 1998-I*, p. 459, § 96*),* the Court notes that the Government do not allege that it resulted in particular hearings being adjourned. Moreover, the Court considers that delays related to the backlog of cases resulting from such a strike come within the State's responsibility. In the light of the above, the Court considers that the period of inactivity until the first adjournment of the appeal hearing must be imputed to the Government. The Court also considers that the same holds true for the fourteen-month delay resulting from the adjournments of the appeal hearing on 9 January 1995 and 6 December 1995, which were due to industrial action by the clerks of the court and the failure of a prosecution witnesses to appear.

26. The Court recalls that Article 6 § 1 of the Convention imposes on the Contracting States the obligation to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time (see the above-mentioned Pélissier and Sassi v. France judgment, op. cit., § 74). In the present case there were excessive delays that were attributable to the national authorities. Consequently, the Court considers that there has been a violation of Article 6 § 1 of the Convention because the "reasonable time" requirement has not been respected.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Non-pecuniary damage

28. In respect of non-pecuniary damage, the applicant sought the sum of 10,000,000 GRD. He claimed that the proceedings damaged his reputation.

29. The Government argued that there was no causal link between the alleged damage to the applicant's reputation and the length of the proceedings.

30. The Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the criminal proceedings against him. Making its assessment on an equitable basis, the Court awards the applicant 2,000,000 GRD as compensation for non-pecuniary damage.

### B. Costs and expenses

31. The applicant also claimed reimbursement of legal costs and expenses incurred domestically and in Strasbourg. Each of the three trips to Komitini, the seat of the Court of Appeal, cost him GRD 30,000. The trip to Athens, the seat of the Court of Cassation, cost him GRD 200,000. Moreover, he paid his lawyer GRD 320,000 for the domestic proceedings, including approximately GRD 30,000 in respect of court fees, and GRD 100,000 for the proceedings in Strasbourg.

32. The Government pointed out that the Court rejected all the applicant's arguments concerning the fairness of the proceedings. It followed that the applicant could not claim costs and expenses in this respect, since these were the inevitable consequence of the proceedings in question. In any event, the applicant did not produce itemised particulars of his claims. As a result, the claim for costs and expenses has to be rejected as a whole.

33. According to the Court's established case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. The Court considers that the duration of the domestic proceedings has to some extent increased the applicant's legal expenses in these proceedings. Moreover, the applicant won his case in Strasbourg at least in part. In the light of all the above and making its assessment on an equitable basis, the Court awards the applicant GRD 300,000 in respect of costs and expenses.

### C. Default interest

35. According to the information available to the Court, the statutory rate of interest applicable in Greece at the time of adoption of the present judgment is 6% per annum.

## FOR THESE REASONS THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 2,000,000 (two million) Greek drachmas for non-pecuniary damage and 300,000 (three hundred thousand) Greek drachmas for costs and expenses and that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English and notified in writing on 25 January 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Marc FISCHBACH
President

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

**CASE OF AGGA v. GREECE**

*(Applications nos. 50776/99 and 52912/99)*

*JUDGMENT*

*STRASBOURG*

17 October 2002

# FINAL

*17/01/2003*

*This judgment will become final in the circumstances set out in Article44 §2 of the Convention. It may be subject to editorial revision.*

**In the case of Agga v. Greece,**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mrs F. TULKENS, *President*,
Mr C.L. ROZAKIS,
Mr G. BONELLO,

Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mr A. KOVLER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 26 September 2002,

Delivers the following judgment, which was adopted on that date:

# PROCEDURE

34.The case originated in two applications (nos.50776/99 and 52912/99) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Greek national, Mr Mehmet Agga ("the applicant"), on 31 August 1999 and 23 November 1999 respectively.

35. The applicant was represented by Mr H. Aga and Mr S. Emin, both lawyers practising in Xanthi and Komotini (northern Greece). The Greek Government ("the Government") were represented by Mr K. Georgiadis and Mr V. Kyriazopoulos of the Legal Council of the State, Acting Agents.

36. The applicant alleged, in particular, that his conviction for usurping the functions of a minister of a "known religion" amounted to a violation of his rights under Articles 9 and 10 of the Convention.

37. The applications were allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

38. The Chamber decided to join the proceedings in the applications (Rule 43 § 1).

39. By a decision of 20 September 2001 Court declared the applications partly admissible.

40. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section.

41. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

42. The applicant was born in 1932 and lives in Xanthi.

43. In 1990 one of the two Muslim religious leaders of Thrace, the Mufti of Xanthi, died. On 15 February 1990 the local Prefect (Νομάρχης) appointed the applicant to act as a deputy (τοποτηρητής).

44. In August 1990 the two independent Muslim Members of Parliament for Xanthi and Rodopi requested the State to organise elections for the post of Mufti of Xanthi. Having received no reply, the two independent MPs decided to organise themselves elections at the

mosques on 17 August 1990 after the prayers. On that date the applicant was chosen to be the Mufti of Xanthi by those attending Friday prayers at the mosques.

45. On 24 December 1990 the President of the Republic, on the proposal of the Council of Ministers and under Article 44 § 1 of the Constitution, adopted a Legislative Act (πράξη νομοθετικού περιεχομένου) by which the manner of election of the Muftis was changed. Law no. 1920/1991 retroactively validated the Legislative Act of 24 December 1990.

46. On 20 August 1991, in accordance with the new regulations, the Greek State appointed another Mufti. The applicant refused to step down.

47. Eight sets of criminal proceedings were instituted against the applicant under Articles 175 and 176 of the Criminal Code for having usurped the functions of a minister of a "known religion". The Court of Cassation, considering that there might be disturbances in Xanthi, decided, under Articles 136 and 137 of the Code of Criminal Procedure, that the proceedings should take place in other cities. The applicant was legally represented throughout the proceedings by lawyers of his own choice. The courts heard a number of prosecution and defence witnesses.

### A. First set of proceedings

48. On 17 January 1994 criminal proceedings were instituted against the applicant on the ground that on 11 January 1993 and 19 April 1993 he had issued messages in the capacity of the mufti of Xanthi.

49. On 28 June 1996 the single-member first instance criminal court (Μονομελές Πλημμελειοδικείο) of Agrinio found the applicant guilty and sentenced him to ten months' imprisonment (decision no. 2206/1996). The applicant appealed (see below paragraph 19).

### B. Second set of proceedings

50. On an unspecified date the applicant was charged for having issued messages in the capacity of the mufti of Xanthi on 3 January 1994, 19 January 1994 and 10 February 1994.

51. On 28 June 1996 the single-member first instance criminal court of Agrinio found the applicant guilty and sentenced him to ten months' imprisonment (decision no. 2207/1996). The applicant appealed.

52. On 29 April 1998 the three-member first instance criminal court (Τριμελές Πλημμελειοδικείο) of Agrinio upheld the applicant's conviction in the first and second sets of proceedings. It imposed a global sentence of six months' imprisonment and converted it into a fine (decision no. 682/1998). The applicant appealed in cassation. He alleged that his conviction amounted to a violation of Articles 6, 9, 10 and 14 of the Convention (see below paragraph 29).

### C. Third set of proceedings

53. On 20 January 1996 a third set of proceedings was instituted against the applicant for the same offence on the ground that on 3 May 1995, 11 November 1995, 13 December 1995,

30 December 1995 and 17 January 1996 he had issued messages in the capacity of the mufti of Xanthi.

54. On 3 April 1997 the single-member first instance criminal court of Lamia found the applicant guilty and sentenced him to twelve months' imprisonment (decision no. 1336/1997). The applicant appealed.

55. On 25 February 1998 the three-member first instance criminal court of Lamia upheld the applicant's conviction and imposed a sentence of eight months' imprisonment. The court converted this sentence into a fine (decision no. 641/1998). The applicant appealed in cassation. He alleged that his conviction amounted to a violation of Articles 6, 9, 10 and 14 of the Convention (see below paragraph 29).

### D. Fourth set of proceedings

56. On 10 September 1996 a fourth set of proceedings was instituted against the applicant on the ground that on 8 August 1995 he had issued a message in the capacity of the mufti of Xanthi.

57. On 3 April 1997 the single-member first instance criminal court of Lamia found the applicant guilty and imposed on him an eight months' prison sentence (decision no. 1335/1997). The applicant appealed.

58. On 25 February 1998 the three-member first instance criminal court of Lamia upheld the applicant's conviction but reduced the prison sentence to six months and converted it into a fine (decision no. 640/1998). The applicant appealed in cassation. He alleged that his conviction amounted to a violation of Articles 6, 9, 10 and 14 of the Convention (see below paragraph 29).

### E. Fifth set of proceedings

59. On an unspecified date a fifth set of proceedings was instituted against the applicant on the ground that on 6 March 1994, 15 May 1994, 14 August 1994, 22 November 1994, 24 December 1994 and 9 January 1995 he had issued messages in the capacity of the mufti of Xanthi.

60. On 7 May 1996 the single-member first instance criminal court of Thessaloniki found him guilty and sentenced him to ten months' imprisonment (decision no. 23145/1996). The applicant appealed.

61. On 5 November 1998 the three-member first instance criminal court of Thessaloniki upheld the applicant's conviction but reduced the prison sentence to eight months and converted it into a fine (decision no. 14370/1998). The applicant appealed in cassation. He alleged that his conviction amounted to a violation of Articles 6, 9, 10 and 14 of the Convention (see below paragraph 30).

### F. The judgments given by the Court of Cassation in the above cases

62. On 12 March 1999 the Court of Cassation rejected the applicant's appeals concerning the first, second, third and fourth sets of proceedings. It considered that the offence in Article 175 of the Criminal Code was committed "when somebody appeared as a minister of a known religion and when he discharged the functions of the minister's office including any of the administrative functions pertaining thereto". The court considered that the applicant had

committed this offence because he behaved and appeared as the Mufti of Xanthi. It further considered that the applicant's conviction was not contrary to Articles 9, 10 and 14 of the Convention, because the applicant had not been punished for his religious beliefs or for expressing certain views but for usurping the functions of a Mufti. As regards Article 6 of the Convention, the Court of Cassation considered that the applicant was legally represented by lawyers of his own choice throughout the proceedings and that he had exercised all his defence rights (judgments nos. 592/1999 and 594/1999).

63. On 2 June 1999 the Court of Cassation rejected the applicant's appeal concerning the fifth set of proceedings for the reasons set out in its judgments nos. 592/1999 and 594/1999 (judgment no. 1133/1999).

### G. Sixth, seven and eighth sets of proceedings

64. Three more sets of proceedings were instituted against the applicant on the ground that on various dates he had issued messages in the capacity of the mufti of Xanthi. The applicant was found guilty by the single-member first instance criminal court of Lamia (decisions nos. 4660/1997, 2552/1998 and 4699/1997).

65. On 28 March 2001 the three-member first instance criminal court of Lamia acquitted the applicant in the light of the Court's judgment in the *Serif v. Greece* case (no. 38178/97, ECHR 1999–IX). The court held that, by addressing religious messages to a group of people who voluntarily followed him as their religious leader, the applicant had not usurped the functions of a minister of a "known religion", but had simply exercised his right to manifest his religion, a right guaranteed by Article 9 of the Convention (decisions nos. 1000/2001, 1001/2001 and 1002/2001).

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. International treaties

66. Article 11 of the Treaty of Peace of Athens between Greece and others, on the one hand, and the Ottoman Empire, on the other, which was concluded on 17 May 1913 and ratified by the Greek Parliament by a law published in the Official Gazette on 14 November 1913, provides as follows:

(original)

> « La vie, les biens, l'honneur, la religion et les coutumes de ceux des habitants des localités cédées à la Grèce qui resteront sous l'administration hellénique seront scrupuleusement respectés.
>
> Ils jouiront entièrement des mêmes droits civils et politiques que les sujets hellènes d'origine. La liberté, la pratique extérieure du culte seront assurées aux Musulmans (...)
>
> Aucune atteinte ne pourra être portée à l'autonomie et à l'organisation hiérarchique des communautés musulmanes existantes ou qui pourraient se former, ni à l'administration des fonds et immeubles qui leur appartiennent (...)
>
> Les Muftis, chacun dans sa circonscription, seront élus par les électeurs musulmans (...)

Les Muftis, outre leur compétence sur les affaires purement religieuses et leur surveillance sur l'administration des biens vacoufs, exerceront leur juridiction entre musulmans en matière de mariage, divorce, pensions alimentaires (néfaca), tutelle, curatelle, émancipation de mineurs, testaments islamiques et successions au poste de mutévelli (Tévliét).

Les jugements rendus par les Muftis seront mis à exécution par les autorités helléniques compétentes.

Quant aux successions, les parties Musulmanes intéressées pourront, après accord préalable, avoir recours au mufti, en qualité d'arbitre. Contre le jugement arbitral ainsi rendu toutes les voies de recours devant les tribunaux du pays seront admises, à moins d'une clause contraire expressément stipulée. »

67. On 10 August 1920 Greece concluded two treaties with the principal Allied Powers in Sèvres. By the first treaty the Allied powers transferred to Greece all the rights and titles which they had acquired over Thrace by virtue of the Peace Treaty they had signed with Bulgaria at Neuilly-sur-Seine on 27 November 1919. The second treaty concerned the protection of minorities in Greece. Article 14 § 1 of the second treaty provides as follows:

"Greece agrees to take all necessary measures in relation to the Moslems to enable questions of family law and personal status to be regulated in accordance with Moslem usage."

68. On 30 January 1923 Greece and Turkey signed a treaty for the exchange of populations. On 24 July 1923 Greece and others, on the one hand, and Turkey, on the other, signed the Treaty of Peace of Lausanne. Articles 42 and 45 of this treaty give the Moslem minority of Greece the same protection as Article 14 § 1 of the Treaty for the Protection of Minorities of Sèvres. On the same day Greece signed a Protocol with the principal Allied Powers bringing into force the two treaties concluded in Sèvres on 10 August 1920. The Greek Parliament ratified the three above-mentioned treaties by a law published in the Official Gazette on 25 August 1923.

69. In its decision no. 1723/1980 the Court of Cassation considered that it was obliged to apply Islamic law in certain disputes between Moslems by virtue of the Treaty of Peace of Athens of 1913, the Treaty for the Protection of Minorities of Sèvres of 1920 and the Treaty of Peace of Lausanne of 1923.

### B. The legislation on the Muftis

70. Law no. 2345/1920 provided that the Muftis, in addition to their religious functions, would have competence to adjudicate on family and inheritance disputes between Moslems in so far as these disputes are governed by Islamic law. It also provided that the Muftis were directly elected by the Moslems who had the right to vote in the national elections and who resided in the Prefectures in which the Muftis would serve. The elections were to be organised by the State and theological school graduates had the right to be candidates. Article 6 § 8 of the law provided for the promulgation of a royal decree to make detailed arrangements for the elections of the Muftis. Such a decree was never promulgated.

71. Under the legislative act of 24 December 1990 the functions and qualifications of the Muftis remain largely unchanged. However, provision is made for the appointment of the Muftis by presidential decree following a proposal by the Minister of Education who, in his turn, must consult a committee composed of the local Prefect and a number of Moslem dignitaries chosen by the State. The act expressly abrogates Law no. 2345/1920. In the act it is envisaged that it should be ratified by law in accordance with Article 44 § 1 of the Constitution.

72. Law no. 1920/1991 retroactively validated the legislative act of 24 December 1990.

### C. Legislative acts under Article 44 § 1 of the Constitution

73. Article 44 § 1 of the Constitution provides as follows:

> "In exceptional circumstances, when an extremely urgent and unforeseeable need arises, the President of the Republic may, on the proposal of the Council of Ministers, adopt legislative acts. These acts must be submitted to Parliament for approval ... within forty days ..."

### D. Relevant provisions of the Criminal Code

74. Article 175 of the Criminal Code provides as follows:

> "1. A person who intentionally usurps the functions of a State or municipal official is punished with imprisonment up to a year or a fine.
>
> 2. This provision also applies when a person usurps the functions of a lawyer or a minister of the Greek Orthodox Church or another known religion."

75. The Court of Cassation has considered that this provision applies in the case of a former priest of the Greek Orthodox Church who continues to wear the priest robes (decision no. 378/1980). The priest in question was defrocked after he joined the Old Calendarists, a religious movement formed by Greek Orthodox priests who wanted the Church to maintain the Julian calendar. In decision no. 454/1966 the Court of Cassation considered that the offence in Article 175 of the Criminal Code is also committed by a person who purports to discharge the administrative functions of a priest. In decisions nos. 140/1964 and 476/1971 the Court of Cassation applied Article 175 of the Code to cases of persons who had purported to exercise the religious functions of an Orthodox priest by conducting services, christening children etc.

76. Article 176 of the Criminal Code provides as follows:

> "A person who publicly wears the uniform or the insignia of a State or municipal official or of a religious minister of those referred to in Article 175 § 2 without having the right to do so ... is punished with imprisonment up to six months or a fine."

### E. The legislation on ministers of "known religions"

77. Ministers of the Greek Orthodox Church and other "known" religions enjoy a number of privileges under domestic law. *Inter alia*, the religious weddings they celebrate produce the same legal effects as civil weddings and they are exempt from military service.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

78. The applicant complained that his conviction amounted to a violation of Article 9 of the Convention, which provides as follows:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

79. The Government argue that there has been no interference with the applicant's right to freedom of religion because Article 9 does not guarantee for the applicant the right to impose on the others his understanding as to Greece's obligations under the Treaty of Peace of Athens.

80. In any event, even if there had been an interference, the Government argue that it would have been justified under the second paragraph of Article 9. It was provided by law, namely Articles 175 and 176 of the Criminal Code. These provisions have been interpreted by the courts in a manner which rendered his conviction foreseeable. Moreover, the interference served a legitimate purpose. By protecting the authority of the lawful Mufti the domestic courts sought to preserve order in the particular religious community and in society at large. They also sought to protect the international relations of the country, an area over which States exercise unlimited discretion.

81. The Government further contend that the interference was necessary in a democratic society. To start with, in many countries, the Muftis are appointed by the State. In Greece, Muftis exercise important judicial functions and judges cannot be elected by the people. This is all the more so that in the instant case the "election" of the applicant had been flawed because it had not been the result of a democratic procedure and the applicant had been used by the local Muslim MPs for party political purposes. Moreover, given that there were two Muftis in Xanthi at the time and that the applicant had questioned the legality of the acts of the lawful mufti, the courts had to convict the spurious one in order not to create tension among the Moslems, between the Moslems and Christians and between Turkey and Greece. In any event, the State had to protect the office of the mufti and, even if there had not existed a lawfully appointed mufti, the applicant would have had to be punished. In this respect, the Government submit that the Court of Cassation did not convict the applicant simply because he appeared as the Mufti. In fact, the courts considered that the offence in Article 175 is committed when somebody actually discharges the functions of a religious minister and that the acts perpetrated by the applicant fell within the administrative functions of a mufti in the broad sense of the term.

82. Lastly, the Government stress that the judgments of the Court of Cassation were given before the Court's judgment in the *Serif v. Greece* case (op. cit.). In this respect, they point out that the applicant was acquitted in the last three sets of proceedings which were instituted against him.

83. The applicant disagrees with the Government's arguments. He submits that his conviction amounted to an interference with his right to be free to exercise his religion together with all those who turned to him for spiritual guidance. He further considers that his conviction was not prescribed by law. In this respect he affirms that the Treaty of Peace of Athens remains in force. The Greek Prime-Minister accepted that at the Diplomatic Conference leading to the 1923 Treaty of Peace of Lausanne. Moreover, the Court of Cassation has recently confirmed the continued validity of the Treaty of peace of Athens and legal scholars hold the same view. The Muslims had never accepted the abrogation of Law no. 2345/1920. The applicant lastly contends that his conviction was not necessary in a

democratic society. He points out that the Christians and Jews in Greece have the right to elect their religious leaders. Depriving the Muslims of this possibility amounts to discriminatory treatment.

84. The Court must consider whether the applicant's Article 9 rights were interfered with and, if so, whether such interference was "prescribed by law", pursued a legitimate aim and was "necessary in a democratic society" within the meaning of Article 9 § 2 of the Convention.

### A. Existence of an interference

85. The Court recalls that, while religious freedom is primarily a matter of individual conscience, it also includes, *inter alia*, freedom, in community with others and in public, to manifest one's religion in worship and teaching (see, *mutatis mutandis*, the Kokkinakis v. Greece judgment of 25 May 1993, Series A no. 260-A, p. 17, § 31).

86. The Court further recalls that the applicant was convicted for having usurped the functions of a minister of a "known religion". The facts underlying the applicant's conviction, as they transpire from the relevant domestic court decisions, were issuing messages of a religious content in the capacity of the Mufti of Xanthi. In these circumstances, the Court considers that the applicant's conviction amounts to an interference with his right under Article 9 § 1 of the Convention, "in community with others and in public ..., to manifest his religion ... in worship [and] teaching" (see the *Serif v. Greece* judgement cited above, p. 85, § 39).

### B. "Prescribed by law"

87. Despite the parties' disagreement as to whether the interference in issue was "prescribed by law", the Court does not consider it necessary to rule on the question because, in any event, the applicant's conviction is incompatible with Article 9 on other grounds (see the *Serif v. Greece* judgement cited above, p. 86, § 42).

### C. Legitimate aim

88. The Court accepts that the interference in question pursued a legitimate aim under Article 9 § 2 of the Convention, namely "to protect public order". It notes in this connection that the applicant was not the only person claiming to be the religious leader of the local Muslim community and that on 20 August 1991 the authorities had appointed another person as Mufti of Xanthi (see the *Serif v. Greece* judgement cited above, p. 86, § 45).

### D. "Necessary in a democratic society"

89. The Court recalls that freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. The pluralism inherent in a democratic society, which has been dearly won over the centuries, depends on it. It is true that in a democratic society it may be necessary to place restrictions on freedom of religion to reconcile the interests of the various religious groups (see the Kokkinakis judgment cited above, pp. 17 and 18, §§ 31 and 33). However, any such restriction must

correspond to a "pressing social need" and must be "proportionate to the legitimate aim pursued" (see, among others, the Wingrove v. the United Kingdom judgment of 25 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1956, § 53).

90. The Court also recalls that the applicant was convicted under Articles 175 and 176 of the Criminal Code, which render criminal offences certain acts against ministers of "known religions". The Court notes in this connection that, although Article 9 of the Convention does not require States to give legal effect to religious weddings and religious courts' decisions, under Greek law weddings celebrated by ministers of "known religions" are assimilated to civil ones and the muftis have competence to adjudicate on certain family and inheritance disputes between Muslims. In such circumstances, it could be argued that it is in the public interest for the State to take special measures to protect from deceit those whose legal relationships can be affected by the acts of religious ministers. However, the Court does not consider it necessary to decide this issue, which does not arise in the applicant's case.

91. The Court notes in this connection that the domestic courts that convicted the applicant did not mention in their decisions any specific acts by the applicant with a view to producing legal effects. The domestic courts convicted the applicant on the mere ground that he had issued messages of religious content and that he had signed them as the Mufti of Xanthi. Moreover, it has not been disputed that the applicant had the support of at least part of the Muslim community in Xanthi. However, in the Court's view, punishing a person for merely presenting himself as the religious leader of a group that willingly followed him can hardly be considered compatible with the demands of religious pluralism in a democratic society.

92. The Court is not oblivious of the fact that in Xanthi there existed, in addition to the applicant, an officially appointed Mufti. Moreover, the Government argued that the applicant's conviction was necessary in a democratic society because his actions undermined the system put in place by the State for the organisation of the religious life of the Muslim community in the region. However, the Court recalls that there is no indication that the applicant attempted at any time to exercise the judicial and administrative functions for which the legislation on the muftis and other ministers of "known religions" makes provision. As for the rest, the Court does not consider that, in democratic societies, the State needs to take measures to ensure that religious communities remain or are brought under a unified leadership.

93. It is true that the Government argued that, in the particular circumstances of the case, the authorities had to intervene in order to avoid the creation of tension among the Muslims in Xanthi and between the Muslims and the Christians of the area as well as Greece and Turkey. Although the Court recognises that it is possible that tension is created in situations where a religious or any other community becomes divided, it considers that this is one of the unavoidable consequences of pluralism. The role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other (see, *mutatis mutandis*, the Plattform "Ärzte für das Leben" v. Austria judgment of 21 June 1988, Series A no. 139, p. 12, § 32). In this connection, the Court notes that, apart from a general reference to the creation of tension, the Government did not make any allusion to disturbances among the Muslims in Xanthi that had actually been or could have been caused by the existence of two religious leaders. Moreover, the Court considers that nothing was adduced that could warrant qualifying the risk of tension between the Muslims and Christians or between Greece and Turkey as anything more than a very remote possibility.

94. In the light of all the above, the Court considers that it has not been shown that the applicant's conviction under Articles 175 and 176 of the Criminal Code was justified in the circumstances of the case by "a pressing social need". As a result, the interference with the applicant's right, in community with others and in public, to manifest his religion in worship and teaching was not "necessary in a democratic society ..., for the protection of public order" under Article 9 § 2 of the Convention (see the *Serif v. Greece* judgment cited above, pp. 88-89, §§ 52-54).

There has, therefore, been a violation of Article 9 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

95. The applicant further complained that, since he had been convicted for certain statements that he had made in writing, there had also been a violation of Article 10 of the Convention, which provides as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

96. Given its finding that there has been a violation of Article 9 of the Convention, the Court does not consider it necessary to examine whether Article 10 was also violated, because no separate issue arises under the latter provision.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

98. The applicant sought one symbolic Greek drachma for non-pecuniary damage.

99. The Court is of the opinion that the applicant suffered some non-pecuniary damage, but, given his request, it considers that the finding of a violation of Article 9 of the Convention constitutes in itself adequate just satisfaction for the purposes of Article 41 of the Convention.

### B. Costs and expenses

100. The applicant did not make any claim in respect of costs and expenses.

101. The Court does not consider it appropriate to make an award in this connection of its own motion.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 9 of the Convention;

2. *Holds* that no separate issue arises under Article 10 of the Convention;

3. *Holds* that the preceding findings amount in themselves to adequate just satisfaction for the purposes of Article 41 of the Convention.

Done in English, and notified in writing on 17 October 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| Erik FRIBERGH | Françoise TULKENS |
|---|---|
| Registrar | President |


COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

**CASE OF AGGA v. GREECE (N° 3)**

*(Application no. 32186/02)*

JUDGMENT

STRASBOURG

13 July 2006

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Agga v. Greece (n° 3),**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr L. LOUCAİDES, *President,*
Mr C.L. ROZAKİS,
Mrs F. TULKENS,
Mrs E. STEİNER,
Mr K. HAJİYEV,
Mr D. SPİELMANN,
Mr S.E. JEBENS, *judges,*
and Mr S. NİELSEN, *Section Regitrar*,

Having deliberated in private on 22 June 2006,

Delivers the following judgment, which was adopted on that date:

# PROCEDURE

102. The case originated in an application (no. 32186/02) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Greek national, Mr Mehmet Agga ("the applicant"), on 6 August 2002.

103. The applicant was represented by Mr S. Emin, a lawyer practising in Komotini (northern Greece). The Greek Government ("the Government") are represented by Mr V. Kyriazopoulos, Adviser at the State Legal Council and Mrs M. Papida, Legal Assistant at the State Legal Council.

104. The applicant alleged, in particular, that his conviction for usurping the functions of a minister of a "known religion" amounted to a violation of his rights under Articles 9 and 10 of the Convention.

105. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

106. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

107. By a decision of 5 April 2005 the Court declared the application partly admissible.

108. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

109. On 17 August 1990 the applicant was chosen to be the Mufti of Xanthi by the Muslims who attended prayers at the mosques of that prefectural district. The Greek State appointed another mufti. However, the applicant refused to step down.

110. Fourth sets of criminal proceedings were instituted against the applicant under Article 175 of the Criminal Code for having usurped the functions of a minister of a "known

religion" on the ground that on 11 February 1996 and 17 February 1996 he had issued and signed messages in the capacity of the Mufti of Xanthi.

111. The applicant was legally represented throughout the proceedings by lawyers of his own choice. The courts heard a number of prosecution and defence witnesses.

112. On 11 December 1997 the single-member first instance criminal court (*monomeles plimmeliodikio*) of Lamia found him guilty in the three first sets of proceedings on the ground that he had issued and signed messages in the capacity of the Mufti of Xanthi (decisions nos. 3913/1997, 3914/1997, 3915/1997). On 1 December 1999 the single-member first instance criminal court (*monomeles plimmeliodikio*) of Lamia found the applicant guilty in the fourth set of proceedings on the same ground (decision no. 4919/1999). The applicant appealed.

113. On 31 May 2000 the three-member first instance criminal court (*trimeles plimmeliodikio*) of Lamia upheld the applicant's conviction in the four sets of proceedings. It imposed, as a whole, a sentence of eight months' imprisonment converted into a fine (decisions nos. 1654/2000, 1655/2000, 1656/2000 and 1657/2000). He alleged that these convictions amounted to a violation of Articles 6, 9 and 10 of the Convention.

114. On 8 March 2002 the Court of Cassation rejected the applicant's appeals concerning the four sets of proceedings. It considered that the offence in Article 175 of the Criminal Code was committed "when somebody appeared as a minister of a known religion and when he discharged the functions of the minister's office including any of the administrative functions pertaining thereto". The court considered that the applicant had committed this offence because he behaved and appeared as the Mufti of Xanthi. It further considered that the applicant's conviction was not contrary to Articles 9 and 10 of the Convention, because the applicant had not been punished for his religious beliefs or for expressing certain views but for usurping the functions of a Mufti. As regards Article 6 of the Convention, the Court of Cassation considered that the applicant was legally represented by lawyers of his own choice throughout the proceedings and that he had exercised all his defence rights (judgment no. 304/2002).

### II. RELEVANT DOMESTIC LAW AND PRACTICE

115. The relevant domestic law and practice are set out in the judgment of 17 October 2002 in the case of *Agga v. Greece (no. 2)*, nos. 50776/99 and 52912/99, §§ 33-44.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

116. The applicant complained that his conviction amounted to a violation of Article 9 of the Convention, which provides as follows:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

### A. Arguments of the parties

117. The Government firstly argue that the applicant was not convicted for the content of the messages that he disseminated but simply because he appeared as the Mufti of Xanthi. As a result, there was no interference with his right to express his religious beliefs because Article 9 does not guarantee the applicant the right to usurp the functions of a minister of a "known religion".

118. In any event, even if there had been interference, the Government argue that it would have been justified under the second paragraph of Article 9. Firstly, according to the Government, the Treaty of Peace of Athens was not in force and the applicant's complaints should be examined under Article 175 of the Criminal Code that was applicable in the present case. In this view, the Government contend that the interference was provided by law, Article 175 of the Criminal Code. This provision has been interpreted by the courts in a manner which rendered his conviction foreseeable. The interference served a legitimate purpose. By protecting the authority of the lawful Mufti the domestic courts sought to preserve order in the particular religious community and in society at large. They also sought to protect the international relations of the country, an area over which States exercise unlimited discretion.

119. The Government further contend that the interference was necessary in a democratic society. In many countries, the Muftis are appointed by the State. Moreover, Muftis exercise important judicial functions in Greece and judges cannot be elected by the people. The Government submit that because there were two Muftis in Xanthi at the time, the courts had to convict the spurious one in order not to create tension among the Muslims, between the Muslims and Christians and between Turkey and Greece. The courts considered that the offence in Article 175 is committed when somebody actually discharges the functions of a religious minister. The courts also considered that the acts that the applicant engaged in fell within the administrative functions of a Mufti in the broad sense of the term.

120. The applicant disagrees with the Government's arguments. He considers that the Treaty of Peace of Athens remains in force (see *Agga v. Greece (no. 2)*, judgment cited above, §§ 33-36). Moreover, the applicant points out that the Muslims living in Thrace had never accepted the abrogation of Law no. 2345/1920. Finally, he argues that the Christians in Greece have the right to elect their religious leaders. Depriving the Muslims of this possibility amounts to discriminatory treatment.

121. The applicant submits that his conviction amounted to an interference with his right to be free to exercise his religion together with all those who turned to him for spiritual guidance. He further considers that his conviction was not prescribed by law. In this respect he affirms that the Treaty of Peace of Athens remains in force. The Greek Prime-Minister accepted that at the Diplomatic Conference leading to the 1923 Treaty of Peace of Lausanne. Moreover, the Court of Cassation has recently confirmed the continued validity of the Treaty of peace of Athens and legal scholars hold the same view. The Muslims had never accepted the abrogation of Law no. 2345/1920. The applicant lastly contends that his conviction was not necessary in a democratic society. He points out that the Christians and Jews in Greece have the right to elect their religious leaders. Depriving the Muslims of this possibility amounts to discriminatory treatment.

## B. The Court's assessment

122. The Court must consider whether the applicant's Article 9 rights were interfered with and, if so, whether such interference was "prescribed by law", pursued a legitimate aim and was "necessary in a democratic society" within the meaning of Article 9 § 2 of the Convention.

### *1. Existence of an interference*

123. The Court recalls that, while religious freedom is primarily a matter of individual conscience, it also includes, *inter alia*, freedom, in community with others and in public, to manifest one's religion in worship and teaching (see, *mutatis mutandis*, *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, p. 17, § 31).

124. The Court further recalls that the applicant was convicted for having usurped the functions of a minister of a "known religion". The facts underlying the applicant's conviction, as they transpire from the relevant domestic court decisions, were that he was issuing messages of a religious content in the capacity of the Mufti of Xanthi. In these circumstances, the Court considers that the applicant's conviction amounts to an interference with his right under Article 9 § 1 of the Convention, "in community with others and in public ..., to manifest his religion ... in worship [and] teaching" (*Serif v. Greece*, no. 38178/97, § 39, ECHR 1999-IX).

### *2. "Prescribed by law"*

125. Despite the parties' disagreement as to whether the interference in issue was "prescribed by law", the Court does not consider it necessary to rule on the question because, in any event, the applicant's conviction is incompatible with Article 9 on other grounds (*Agga v. Greece (no. 2)*, judgment cited above, § 54).

### *3. Legitimate aim*

126. The Court accepts that the interference in question pursued a legitimate aim under Article 9 § 2 of the Convention, namely "to protect public order". It notes in this connection that the applicant was not the only person claiming to be the religious leader of the local Muslim community and that on 20 August 1991 the authorities had appointed another person as Mufti of Xanthi (*Agga v. Greece (no. 2),* judgment cited above, § 55).

### *4. "Necessary in a democratic society"*

127. The Court recalls that freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. The pluralism inherent in a democratic society, which has been dearly won over the centuries, depends on it. It is true that in a democratic society it may be necessary to place restrictions on freedom of religion to reconcile the interests of the various religious groups (see *Kokkinakis v. Greece*, judgment cited above, pp. 17 and 18, §§ 31 and 33). However, any such restriction must correspond to a "pressing social need" and must be "proportionate to the legitimate aim pursued" (see, among others, *Wingrove v. the United Kingdom*, judgment of 25 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1956, § 53).

128. The Court recalls that in the case of *Agga v. Greece (no. 2)*, (judgment cited above), concerning the same applicant and similar facts, it has already found a violation of Article 9

of the Convention due to the applicant's conviction under Articles 175 and 176 of the Criminal Code. In particular, the Court noted that:

> "(...) the domestic courts that convicted the applicant did not mention in their decisions any specific acts by the applicant with a view to producing legal effects. The domestic courts convicted the applicant on the mere ground that he had issued messages of religious content and that he had signed them as the Mufti of Xanthi. Moreover, it has not been disputed that the applicant had the support of at least part of the Muslim community in Xanthi. However, in the Court's view, punishing a person for merely presenting himself as the religious leader of a group that willingly followed him can hardly be considered compatible with the demands of religious pluralism in a democratic society. (...) the Court recalls that there is no indication that the applicant attempted at any time to exercise the judicial and administrative functions for which the legislation on the muftis and other ministers of "known religions" makes provision. As for the rest, the Court does not consider that, in democratic societies, the State needs to take measures to ensure that religious communities remain or are brought under a unified leadership. (...) apart from a general reference to the creation of tension, the Government did not make any allusion to disturbances among the Muslims in Xanthi that had actually been or could have been caused by the existence of two religious leaders. Moreover, the Court considers that nothing was adduced that could warrant qualifying the risk of tension between the Muslims and Christians or between Greece and Turkey as anything more than a very remote possibility" (*Agga v. Greece (no. 2)*, judgment cited above, §§ 58-60).

129. Turning to the instant case, the Court observes that the applicant was convicted under Article 175 of the Criminal Code, which renders criminal offence the act of intentionally usurping the functions of a State or municipal official. However, as in the *Agga v. Greece (no. 2)* judgment (cited above, § 58), the Court notes that the domestic courts that convicted the applicant did not mention in their decisions any specific acts by the applicant with a view to producing legal effects. On the contrary, the domestic courts convicted the applicant on the mere ground that he had issued messages of religious content and that he had signed them as the Mufti of Xanthi.

130. In the light of the above circumstances, the Court does not find any reason from departing from its aforementioned judgment. In particular, the Court considers that it has not been shown that the applicant's conviction under Article 175 of the Criminal Code was justified in the circumstances of the case by "a pressing social need". As a result, the interference with the applicant's right, in community with others and in public, to manifest his religion in worship and teaching was not "necessary in a democratic society ..., for the protection of public order" under Article 9 § 2 of the Convention (see *Agga v. Greece (no. 2),* judgment cited above, § 61).

There has, therefore, been a violation of Article 9 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

131. The applicant further complained that, since he had been convicted for certain statements that he had made in writing, there had also been a violation of Article 10 of the Convention, which provides as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or

rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

132. Given its finding that there has been a violation of Article 9 of the Convention, the Court does not consider it necessary to examine whether Article 10 was also violated, because no separate issue arises under the latter provision.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

133. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

134. The applicant claimed compensation for pecuniary loss amounting to 1,848.86 euros (EUR) corresponding to the fine that he was called to pay by the three-member first instance criminal court of Lamia, without submitting any supporting documents. He further sought an award of EUR 10,000 for non-pecuniary damage.

135. The respondent Government submitted that the applicant should be award satisfaction only for the damage he has actually suffered. As regards the applicant's claim for non-pecuniary damage, the respondent Government considered that the finding of a violation of Article 9 of the Convention constitutes in itself adequate just satisfaction for the purposes of Article 41 of the Convention.

136. The Court observes that the applicant has failed to show that he had paid any amount as a fine. Moreover, he has not produced any evidence from which the specific amount emerges. The Court therefore dismisses his claim under this head. Furthermore, as regards the applicant's claim for non-pecuniary damage, the Court considers that the finding of a violation of Article 9 of the Convention constitutes in itself adequate just satisfaction for the purposes of Article 41 of the Convention.

### B. Costs and expenses

137. Finally, the applicant sought reimbursement of costs and expenses incurred in the course of the domestic proceedings and the proceedings before the Court amounting to EUR 5,119.95. He detailed his claims as follows:

(a) EUR 1,619.95 for fees and expenses in the proceedings before the domestic courts;

(b) EUR 2,500 for various expenses (travelling expenses and accommodation) and

(c) EUR 1,000 for fee in the proceedings before the Court.

The applicant provided invoices solely for the domestic proceedings.

138. The Government submitted that costs and expenses should be awarded to the extent that they were actually and necessarily incurred and were reasonable to quantum.

139. The Court reiterates that under Article 41 of the Convention, it will reimburse only the costs and expenses that are shown to have been actually and necessarily incurred and are reasonable as to quantum. Furthermore, Rule 60 § 2 of the Rules of Court provides that itemised particulars of any claim made under Article 41 of the Convention must be submitted,

together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part (see, for example, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 133, ECHR 2004-XI).

140. In the instant case, the Court observes that the applicant has submitted supporting documents solely as regards the costs and expenses incurred in the course of the domestic proceedings. The Court is satisfied that the costs and expenses before the domestic courts were actually and necessarily incurred in order to obtain redress for or prevent the matter found to constitute a violation of the Convention and were reasonable as to quantum. In accordance with the criteria laid down in its case law, it therefore awards the applicant EUR 1,620 under this head, plus any tax that may be chargeable.

### C. Default interest

141. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 9 of the Convention;

2. *Holds* that no separate issue arises under Article 10 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1,620 (one thousand six hundred and twenty euros) for costs and expenses, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Søren NIELSEN | Loukis LOUCAÏDES |
| Registrar | President |

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

**CASE OF AGGA v. GREECE (N° 4)**

*(Application no. 33331/02)*

JUDGMENT

STRASBOURG

13 July 2006

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Agga v. Greece (n° 4),**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr L. LOUCAÏDES, *President,*
Mr C.L. ROZAKIS,
Mrs F. TULKENS,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges,*
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 22 June 2006,

Delivers the following judgment, which was adopted on that date:

# PROCEDURE

142. The case originated in an application (no. 33331/02) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Greek national, Mr Mehmet Agga ("the applicant"), on 6 August 2002.

143. The applicant was represented by Mr S. Emin, a lawyer practising in Komotini (northern Greece). The Greek Government ("the Government") are represented by Mr V. Kyriazopoulos, Adviser at the State Legal Council and Mrs M. Papida, Legal Assistant at the State Legal Council.

144. The applicant alleged, in particular, that his conviction for usurping the functions of a minister of a "known religion" amounted to a violation of his rights under Articles 9 and 10 of the Convention.

145. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

146. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

147. By a decision of 26 May 2005 the Court declared the application partly admissible.

148. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

149. On 17 August 1990 the applicant was chosen to be the Mufti of Xanthi by the Muslims who attended prayers at the mosques of that prefectural district. The Greek State appointed another Mufti. However, the applicant refused to step down.

150. In 1997 three sets of criminal proceedings were instituted against the applicant under Article 175 of the Criminal Code for having usurped the functions of a minister of a "known

religion" on the ground that on 30 October 1997, 20 November 1996 and 21 December 1997 he had issued and signed messages in the capacity of the Mufti of Xanthi.

151. The applicant was legally represented throughout the proceedings by lawyers of his own choice. The courts heard a number of prosecution and defence witnesses.

152. On 24 March 1999 the single-member first instance criminal court (*monomeles plimmeliodikio*) of Serres found the applicant guilty in the three sets of proceedings on the ground that he had issued and signed messages in the capacity of the Mufti of Xanthi. The proceedings were joined because they concerned the same offence (decision no. 1407/1999).

153. On 2 November 2000 the three-member first instance criminal court (*trimeles plimmeliodikio*) of Serres upheld the applicant's conviction. It imposed, as a whole, a sentence of seven months' imprisonment and converted it into a fine (decision no. 2687/2000). The applicant appealed in cassation. He alleged that this conviction amounted to a violation of Articles 6, 9 and 10 of the Convention.

154. On 21 March 2002 the Court of Cassation rejected the applicants' appeal. It considered that the offence in Article 175 of the Criminal Code was committed "when somebody appeared as a minister of a known religion and when he discharged the functions of the minister's office including any of the administrative functions pertaining thereto". The court considered that the applicant had committed this offence because he behaved and appeared as the Mufti of Xanthi. It further considered that the applicant's conviction was not contrary to Articles 9 and 10 of the Convention, because the applicant had not been punished for his religious beliefs or for expressing certain views but for usurping the functions of a Mufti. As regards Article 6 of the Convention, the Court of Cassation considered that the applicant was legally represented by lawyers of his own choice throughout the proceedings and that he had exercised all his defence rights (judgment no. 708/2002).

### II. RELEVANT DOMESTIC LAW AND PRACTICE

155. The relevant domestic law and practice are set out in the judgment of 17 October 2002 in the case of *Agga v. Greece (no. 2)*, nos. 50776/99 and 52912/99, §§ 33-44.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

156. The applicant complained that his conviction amounted to a violation of Article 9 of the Convention, which provides as follows:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

### A. Arguments of the parties

157. The Government firstly argue that the applicant was not convicted for the content of the messages that he disseminated but simply because he appeared as the Mufti of Xanthi. As a result, there was no interference with his right to express his religious beliefs because Article 9 does not guarantee the applicant the right to usurp the functions of a minister of a "known religion".

158. In any event, even if there had been interference, the Government argue that it would have been justified under the second paragraph of Article 9. Firstly, according to the Government, the Treaty of Peace of Athens was not in force and the applicant's complaints should be examined under Article 175 of the Criminal Code that was applicable in the present case. In this view, the Government contend that the interference was provided by law, Article 175 of the Criminal Code. This provision has been interpreted by the courts in a manner which rendered his conviction foreseeable. The interference served a legitimate purpose. By protecting the authority of the lawful Mufti the domestic courts sought to preserve order in the particular religious community and in society at large. They also sought to protect the international relations of the country, an area over which States exercise unlimited discretion.

159. The Government further contend that the interference was necessary in a democratic society. In many countries, the Muftis are appointed by the State. Moreover, Muftis exercise important judicial functions in Greece and judges cannot be elected by the people. The Government submit that because there were two Muftis in Xanthi at the time, the courts had to convict the spurious one in order not to create tension among the Muslims, between the Muslims and Christians and between Turkey and Greece. The courts considered that the offence in Article 175 is committed when somebody actually discharges the functions of a religious minister. The courts also considered that the acts that the applicant engaged in fell within the administrative functions of a Mufti in the broad sense of the term.

160. The applicant disagrees with the Government's arguments. He considers that the Treaty of Peace of Athens remains in force (see *Agga v. Greece (no. 2)*, judgment cited above, §§ 33-36). Moreover, the applicant points out that the Muslims living in Thrace had never accepted the abrogation of Law no. 2345/1920. Finally, he argues that the Christians in Greece have the right to elect their religious leaders. Depriving the Muslims of this possibility amounts to discriminatory treatment.

161. The applicant submits that his conviction amounted to an interference with his right to be free to exercise his religion together with all those who turned to him for spiritual guidance. He further considers that his conviction was not prescribed by law. In this respect he affirms that the Treaty of Peace of Athens remains in force. The Greek Prime-Minister accepted that at the Diplomatic Conference leading to the 1923 Treaty of Peace of Lausanne. Moreover, the Court of Cassation has recently confirmed the continued validity of the Treaty of peace of Athens and legal scholars hold the same view. The Muslims had never accepted the abrogation of Law no. 2345/1920. The applicant lastly contends that his conviction was not necessary in a democratic society. He points out that the Christians and Jews in Greece have the right to elect their religious leaders. Depriving the Muslims of this possibility amounts to discriminatory treatment.

## B. The Court's assessment

162. The Court must consider whether the applicant's Article 9 rights were interfered with and, if so, whether such interference was "prescribed by law", pursued a legitimate aim and was "necessary in a democratic society" within the meaning of Article 9 § 2 of the Convention.

### *1 Existence of an interference*

163. The Court recalls that, while religious freedom is primarily a matter of individual conscience, it also includes, *inter alia*, freedom, in community with others and in public, to manifest one's religion in worship and teaching (see, *mutatis mutandis*, *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, p. 17, § 31).

164. The Court further recalls that the applicant was convicted for having usurped the functions of a minister of a "known religion". The facts underlying the applicant's conviction, as they transpire from the relevant domestic court decisions, were that he was issuing messages of a religious content in the capacity of the Mufti of Xanthi. In these circumstances, the Court considers that the applicant's conviction amounts to an interference with his right under Article 9 § 1 of the Convention, "in community with others and in public ..., to manifest his religion ... in worship [and] teaching" (*Serif v. Greece*, no. 38178/97, § 39, ECHR 1999-IX).

### *2. "Prescribed by law"*

165. Despite the parties' disagreement as to whether the interference in issue was "prescribed by law", the Court does not consider it necessary to rule on the question because, in any event, the applicant's conviction is incompatible with Article 9 on other grounds (*Agga v. Greece (no. 2)*, judgment cited above, § 54).

### *3. Legitimate aim*

166. The Court accepts that the interference in question pursued a legitimate aim under Article 9 § 2 of the Convention, namely "to protect public order". It notes in this connection that the applicant was not the only person claiming to be the religious leader of the local Muslim community and that on 20 August 1991 the authorities had appointed another person as Mufti of Xanthi (*Agga v. Greece (no. 2),* judgment cited above, § 55).

### *4. "Necessary in a democratic society"*

167. The Court recalls that freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. The pluralism inherent in a democratic society, which has been dearly won over the centuries, depends on it. It is true that in a democratic society it may be necessary to place restrictions on freedom of religion to reconcile the interests of the various religious groups (see *Kokkinakis v. Greece*, judgment cited above, pp. 17 and 18, §§ 31 and 33). However, any such restriction must correspond to a "pressing social need" and must be "proportionate to the legitimate aim pursued" (see, among others, *Wingrove v. the United Kingdom*, judgment of 25 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1956, § 53).

168. The Court recalls that in the case of *Agga v. Greece (no. 2)*, (judgment cited above), concerning the same applicant and similar facts, it has already found a violation of Article 9

of the Convention due to the applicant's conviction under Articles 175 and 176 of the Criminal Code. In particular, the Court noted that:

> "(...) the domestic courts that convicted the applicant did not mention in their decisions any specific acts by the applicant with a view to producing legal effects. The domestic courts convicted the applicant on the mere ground that he had issued messages of religious content and that he had signed them as the Mufti of Xanthi. Moreover, it has not been disputed that the applicant had the support of at least part of the Muslim community in Xanthi. However, in the Court's view, punishing a person for merely presenting himself as the religious leader of a group that willingly followed him can hardly be considered compatible with the demands of religious pluralism in a democratic society. (...) the Court recalls that there is no indication that the applicant attempted at any time to exercise the judicial and administrative functions for which the legislation on the muftis and other ministers of "known religions" makes provision. As for the rest, the Court does not consider that, in democratic societies, the State needs to take measures to ensure that religious communities remain or are brought under a unified leadership. (...) apart from a general reference to the creation of tension, the Government did not make any allusion to disturbances among the Muslims in Xanthi that had actually been or could have been caused by the existence of two religious leaders. Moreover, the Court considers that nothing was adduced that could warrant qualifying the risk of tension between the Muslims and Christians or between Greece and Turkey as anything more than a very remote possibility" (*Agga v. Greece (no. 2)*, judgment cited above, §§ 58-60).

169. Turning to the instant case, the Court observes that the applicant was convicted under Article 175 of the Criminal Code, which renders criminal offence the act of intentionally usurping the functions of a State or municipal official. However, as in the *Agga v. Greece (no. 2)* judgment (cited above, § 58), the Court notes that the domestic courts that convicted the applicant did not mention in their decisions any specific acts by the applicant with a view to producing legal effects. On the contrary, the domestic courts convicted the applicant on the mere ground that he had issued messages of religious content and that he had signed them as the Mufti of Xanthi.

170. In the light of the above circumstances, the Court does not find any reason from departing from its aforementioned judgment. In particular, the Court considers that it has not been shown that the applicant's conviction under Article 175 of the Criminal Code was justified in the circumstances of the case by "a pressing social need". As a result, the interference with the applicant's right, in community with others and in public, to manifest his religion in worship and teaching was not "necessary in a democratic society ..., for the protection of public order" under Article 9 § 2 of the Convention (see *Agga v. Greece (no. 2),* judgment cited above, § 61).

There has, therefore, been a violation of Article 9 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

171. The applicant further complained that, since he had been convicted for certain statements that he had made in writing, there had also been a violation of Article 10 of the Convention, which provides as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or

rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

172. Given its finding that there has been a violation of Article 9 of the Convention, the Court does not consider it necessary to examine whether Article 10 was also violated, because no separate issue arises under the latter provision.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

173. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

174. The applicant claimed compensation for pecuniary loss amounting to 1,848.86 euros (EUR) corresponding to the fine that he was called to pay by the three-member first instance criminal court of Serres, without submitting any supporting documents. He further sought an award of EUR 10,000 for non-pecuniary damage.

175. As regards the applicant's claim in respect of pecuniary damage, the respondent Government submitted that the applicant should be award satisfaction only for the damage he has actually suffered. As regards the applicant's claim for non-pecuniary damage, the respondent Government considered that the finding of a violation of Article 9 of the Convention constitutes in itself adequate just satisfaction for the purposes of Article 41 of the Convention.

176. The Court observes that the applicant has failed to show that he had paid any amount as a fine. Moreover, he has not produced any evidence from which the specific amount emerges. The Court therefore dismisses his claim under this head. Furthermore, as regards the applicant's claim for non-pecuniary damage, the Court considers that the finding of a violation of Article 9 of the Convention constitutes in itself adequate just satisfaction for the purposes of Article 41 of the Convention.

### B. Costs and expenses

177. Finally, the applicant sought reimbursement of costs and expenses incurred in the course of the domestic proceedings and the proceedings before the Court amounting to EUR 4,379.30. He detailed his claims as follows:

(a) EUR 1,379.30 for fees and expenses in the proceedings before the domestic courts;

(b) EUR 2,000 for various expenses (travelling expenses and accommodation) and

(c) EUR 1,000 for fee in the proceedings before the Court.

The applicant provided invoices solely for the domestic proceedings.

178. The Government submitted that costs and expenses should be awarded to the extent that they were actually and necessarily incurred and were reasonable to quantum.

179. The Court reiterates that under Article 41 of the Convention, it will reimburse only the costs and expenses that are shown to have been actually and necessarily incurred and are reasonable as to quantum. Furthermore, Rule 60 § 2 of the Rules of Court provides that

itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part (see, for example, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 133, ECHR 2004-XI).

180. In the instant case, the Court observes that the applicant has submitted supporting documents solely as regards the costs and expenses incurred in the course of the domestic proceedings. The Court is satisfied that the costs and expenses before the domestic courts were actually and necessarily incurred in order to obtain redress for or prevent the matter found to constitute a violation of the Convention and were reasonable as to quantum. In accordance with the criteria laid down in its case law, it therefore awards the applicant EUR 1,380 under this head, plus any tax that may be chargeable.

### C. Default interest

181. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 9 of the Convention;

2. *Holds* that no separate issue arises under Article 10 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1,380 (one thousand three hundred and eighty euros) for costs and expenses, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Søren NIELSEN | Loukis LOUCAÏDES |
| Registrar | President |