



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

AFFAIRE TSAVACHIDIS c. GRECE

CASE OF TSAVACHIDIS v. GREECE

(Requête n°/Application no. 28802/95)

ARRÊT/JUDGMENT

STRASBOURG

21 janvier/January 1999

In the case of Tsavachidis v. Greece,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), as amended by Protocol No. 11¹, and the relevant provisions of the Rules of Court², as a Grand Chamber composed of the following judges:

Mrs E. PALM, *President*,
Mr L. FERRARI BRAVO,
Mr GAUKUR JÖRUNDSSON,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr I. CABRAL BARRETO,
Mr J.-P. COSTA,
Mr W. FUHRMANN,
Mr K. JUNGWIERT,
Mr M. FISCHBACH,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mrs W. THOMASSEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr T. PANTIRU,
Mr E. LEVITS,
Mr C. YERARIS, *ad hoc judge*,

and also of Mr M. DE SALVIA, *Registrar*,

Having deliberated in private on 17 December 1998,

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

PROCEDURE

1. The case was referred to the Court, as established under former Article 19 of the Convention³, by the European Commission of Human Rights (“the Commission”) on 15 December 1997, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 28802/95) against the Hellenic Republic lodged with the Commission under former Article 25 by a Greek national, Mr Gabriel Tsavachidis, on 20 September 1995.

Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

3. Since the entry into force of Protocol No. 11, which amended Article 19, the Court has functioned on a permanent basis.

The Commission's request referred to former Articles 44 and 48 and to the declaration whereby Greece recognised the compulsory jurisdiction of the Court (former Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 8, 9, 11 and 14 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of former Rules of Court A¹, the applicant stated that he wished to take part in the proceedings and designated Mr P. Bitsaxis, of the Athens Bar, as the lawyer who would represent him. The Government indicated that they would be represented by Mr M. Apetsos, Senior Adviser, State Legal Council, and Mr V. Kyriazopoulos, Legal Assistant, State Legal Council.

3. As President of the Chamber which had originally been constituted (former Article 43 of the Convention and former Rule 21) in order to deal, in particular, with procedural matters that might arise before the entry into force of Protocol No. 11, Mr R. Bernhardt, the President of the Court at the time, acting through the Registrar, consulted the Agent of the Greek Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the written procedure. Pursuant to the order made in consequence, the Registrar received the Government's memorial on 27 May 1998 and the applicant's memorial on 29 May 1998.

4. On 16 July 1998 the Commission produced the file on the proceedings before it, as requested by the Registrar on the instructions of the President of the Chamber.

5. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mr C.L. Rozakis, the judge elected in respect of Greece (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, and Mr J.-P. Costa and Mr M. Fischbach, Vice-Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr L. Ferrari Bravo, Mr Gaukur. Jörundsson, Mr L. Caflisch, Mr P. Kūris, Mr I. Cabral Barreto, Mr W. Fuhrmann, Mrs N. Vajić, Mr J. Hedigan, Mrs W. Thomassen, Mrs M. Tsatsa-Nikolovska, Mr T. Pantiru and Mr E. Levits (Rule 24 § 3 and Rule 100 § 4). Subsequently Mr Rozakis, who had taken part in the Commission's examination of the case, withdrew from sitting in the Grand Chamber (Rule 28). The Government accordingly appointed Mr C. Yeraris to sit as an *ad hoc* judge (Article 27 § 2 of the

1. *Note by the Registry.* Rules of Court A applied to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and from then until 31 October 1998 only to cases concerning States not bound by that Protocol.

Convention and Rule 29 § 1). Later, as Mr Wildhaber was unable to take part in the further consideration of the case, his place as President of the Grand Chamber was taken by Mrs Palm, and Mr K. Jungwiert, substitute judge, replaced him as a member of the Grand Chamber (Rules 10 and 24 § 5 (b)).

6. At the Court's invitation (Rule 99), the Commission delegated one of its members, Mr B. Marxer, to take part in the proceedings before the Grand Chamber.

7. On 4 and 5 November 1998 respectively the Government and counsel for Mr Tsavachidis communicated to the Court the text of an agreement concluded between them, together with a request that the case should be struck out of the Court's list. The Delegate of the Commission was consulted and on 3 December 1998 stated that he had no objection to the case being struck out of the list.

8. On 9 November 1998 the President of the Court decided to cancel the hearing scheduled for 12 November.

AS TO THE FACTS

9. Mr Tsavachidis, who was born in 1941 and lives at Kilkis, is a Jehovah's Witness. In 1981 he rented a hall at Kilkis for meetings of Jehovah's Witnesses.

10. In 1993 a lawyer at Kilkis forwarded to the Kilkis public prosecutor's office a complaint dated 5 February 1993 alleging that a Jehovah's Witnesses church was operating at Kilkis without the necessary permission from the local Church authorities and the Minister of Education and Religious Affairs, as required by Article 1 of the royal decree of 20 May/2 June 1939. The prosecutor's office also received an anonymous document dated 7 March 1993 and bearing the words "Highly confidential report". In the report it was indicated that it had been drawn up in accordance with an order (reproduced on the reverse) and stated that an investigation carried out in the Records Office of the department had shown that no application for permission to operate a place of worship had been lodged in the past by the Jehovah's Witnesses within the area under the department's jurisdiction. Furthermore, the report described in great detail the premises on which the Jehovah's Witnesses met and the manner in which their meetings were conducted and gave the number of participants and personal particulars of their presumed leader, the applicant.

11. On 7 May 1993 the Kilkis public prosecutor asked the judge of the local magistrates' court to carry out a preliminary investigation in order to check the accuracy of the aforementioned information.

12. In the light of the findings of that preliminary investigation, the prosecutor brought proceedings against Mr Tsavachidis for having unlawfully opened a place of worship, and in an order of 23 December 1993 he committed him for trial at the Kilkis Criminal Court sitting with a single judge.

13. In a radio broadcast on 13 December 1994 Mr Tsavachidis's lawyer denounced the existence at Kilkis of an illegal network to keep the members of religious minorities under surveillance and requested the ministers concerned to order an inquiry.

14. At the beginning of the trial on 7 April 1995 the applicant challenged the validity of the summons committing him for trial, on the ground that the report could not be regarded as forming part of the evidence as it was unsigned.

The court refused to hold that the summons was a nullity but decided not to take the report into account as it bore no signature or other feature that would make it possible to identify its author.

Accepting the prosecutor's submissions, the court acquitted the applicant on the ground that there was no document or witness evidence to prove that he had committed the offences with which he had been charged (judgment no. 664/1995).

15. On the same day, the Kilkis public prosecutor and the court declined to conduct an inquiry – requested by the applicant – as to the origin of the report in issue and, if appropriate, to bring proceedings against the authors of it.

16. On 4 August 1993 a large-circulation daily, the *Eleftheotypia*, had revealed the existence of another highly confidential report, drawn up by the National Intelligence Service and dated 19 January 1993, which contained allegations prejudicial to Greek citizens who were not members of the Greek Orthodox Church.

On 11 August 1993 the Prime Minister stated that this report was the outcome of an initiative by a junior civil servant and that it did not in any way reflect the government's position.

17. On the same day, the *Eleftheotypia* newspaper published another confidential report from the National Intelligence Service which described, among other things, the existence and activities of Jehovah's Witnesses and other religious minorities in other parts of Greece.

PROCEEDINGS BEFORE THE COMMISSION

18. Mr Tsavachidis applied to the Commission on 20 September 1995. He complained that the National Intelligence Service had kept him under surveillance on account of his membership of the Church of Jehovah's Witnesses. He relied on Articles 5, 8, 9, 11 and 14 of the Convention.

19. The Commission declared the application (no. 28802/95) partly admissible on 4 March 1997. In its report of 28 October 1997 (former Article 31 of the Convention), it expressed the opinion that there had been a violation of the right to respect for private life secured in Article 8 (thirteen votes to four); that there had been no violation of the right to freedom of religion, secured in Article 9 (nine votes to eight); that no separate issue arose under Article 11 (right to freedom of association) (fourteen votes to three); and that it was unnecessary to consider whether there had been a violation of Article 14 (prohibition of discrimination) of the Convention taken together with Articles 8, 9 and 11 (unanimously)¹.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

20. The Government asked the Court to “dismiss the application as inadmissible or to decide that it is unfounded with regard to all the complaints relating to violations of Articles 8, 9, 11 and 14 of the Convention”.

AS TO THE LAW

21. On 4 November 1998 the Court received the following text from the Agent of the Government:

“With reference to your letter of 13 October 1998, I write to inform you that the Government wish to conclude a friendly settlement in this case consisting in the payment of 1,500,000 drachmas for the costs incurred by the applicant in the proceedings before the European Commission of Human Rights and in a statement to the effect that the Jehovah’s Witnesses are not, and will not in the future be, subject to any surveillance on account of their religious beliefs.

I have already contacted the applicant’s representative, Mr Bitsaxis, who agrees to this friendly settlement.

I consequently request the Court to strike the case out of its list.”

22. In a letter of 5 November 1998 to the Court the applicant’s lawyer confirmed that agreement in the following terms:

1. *Note by the Registry.* A copy of the Commission’s report is obtainable from the Registry.

“On behalf of the applicant, Mr Tsavachidis, I am writing to inform the Court that the Greek Government and the applicant have concluded a friendly settlement in the ... case which is pending before the Court and is set down for hearing on 12 November 1998.

The Government are stating at this stage of the case that the Jehovah’s Witnesses are not subject to secret surveillance on account of their religious beliefs and will never be subject to such surveillance in the future. The Government have also undertaken to pay the applicant the sum of 1,500,000 drachmas for the costs incurred in the proceedings before the European Commission of Human Rights.

That statement satisfies the applicant, who consequently accepts the friendly settlement of the case. He therefore asks the Court to strike the case out of its list.”

23. The Delegate of the Commission was consulted and raised no objection.

24. The Court takes formal note of the agreement reached by the Government and Mr Tsavachidis and notes also that the agreement affords the applicant satisfaction. It would nevertheless be open to the Court, having regard to its responsibilities under Article 37 § 1 *in fine* of the Convention, to decide to continue its examination of the case if it were not satisfied that the settlement in question was based on respect for human rights as recognised in the Convention or its Protocols (Rule 62 § 3). However, that is not so in this case.

25. In this connection, the Court points out that in a number of earlier cases it had to consider systems of secret surveillance in States other than Greece and to ascertain, under Article 8 of the Convention, that there were adequate and effective safeguards against abuses of such systems (see the following judgments: *Klass and Others v. Germany*, 6 September 1978, Series A no. 28; *Malone v. the United Kingdom*, 2 August 1984, Series A no. 82; and *Leander v. Sweden*, 26 March 1987, Series A no. 116). Furthermore, in the cases of *Kokkinakis v. Greece* and *Manoussakis and Others v. Greece* (see the judgments of 25 May 1993, Series A no. 260-A, and 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, respectively) – in which the facts were, however, different from those of the instant case – the Court had to rule under Article 9 of the Convention on the application of the relevant Greek legislation to the Jehovah’s Witnesses. In so doing, it clarified the nature and extent of the Contracting States’ obligations in that regard.

26. It follows that the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 21 January 1999.

Michele DE SALVIA
Registrar

Elisabeth PALM
President