

In the case of Pentidis and Others v. Greece (1),

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A (2), as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr R. Macdonald,
Mr N. Valticos,
Sir John Freeland,
Mr A.B. Baka,
Mr B. Repik,
Mr U. Lohmus,
Mr J. Casadevall,
Mr E. Levits,

and also of Mr H. Petzold, Registrar, and Mr P.J. Mahoney, Deputy Registrar,

Having deliberated in private on 21 February and on 2 June 1997,

Delivers the following judgment, which was adopted on the last-mentioned date:

Notes by the Registrar

1. The case is numbered 59/1996/678/868. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 17 April 1996, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 23238/94) against the Hellenic Republic lodged with the Commission under Article 25 (art. 25) by three Greek nationals, Mr Zissis Pentidis, Mr Dimitrios Katharios and Mr Anastassios Stagopoulos, on 30 December 1993.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Greece recognised the compulsory jurisdiction of the Court (Article 46) (art. 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 3, 8, 9, 10, 11 and 14 of the Convention (art. 3, art. 8, art. 9, art. 10, art. 11, art. 14) and of Article 1 of Protocol No. 1 (P1-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicants stated that they wished to take part in the proceedings and designated the lawyer who would represent them (Rule 30).

3. The Chamber to be constituted included ex officio Mr N. Valticos, the elected judge of Greek nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 4 (b)). On 27 April 1996, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr R. Macdonald, Sir John Freeland, Mr A.B. Baka, Mr B. Repik, Mr U. Lohmus and Mr J. Casadevall (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43). Subsequently, Mr E. Levits, substitute judge, replaced Mr Gölcüklü, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).
4. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Greek Government ("the Government"), the applicants' lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). The Government's memorial reached the registry on 16 December 1996 and the applicants' memorial on 18 December.
5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 18 February 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr V. Kondolaimos, Senior Adviser, Legal Council of State,	Delegate of the Agent,
Mr V. Kyriazopoulos, Adviser, Legal Council of State,	Adviser;

(b) for the Commission

Mr J.-C. Geus,	Delegate;
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(c) for the applicants

Mr P. Bitsaxis, of the Athens Bar,	Counsel.
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The Court heard addresses by Mr Geus, Mr Bitsaxis and Mr Kyriazopoulos, and also their replies to its questions.

6. By a letter of 12 May 1997, which reached the registry on 20 May, the applicants' lawyer submitted to the Court a request that the case be struck out of the list. On 22 May 1997 the Registrar received a letter from the Agent of the Government in which he agreed to the striking out of the case. On 27 May 1997 the Delegate of the Commission informed the Court that he raised no objection to the application of Rule 49 para. 2 of Rules of Court A.

AS TO THE FACTS

I. Particular circumstances of the case

A. Background

7. The applicants are all three Jehovah's Witnesses and live in Alexandroupolis and Komotini (western Thrace).
8. On 28 June 1990 they rented under a private agreement a room in a building in Alexandroupolis. The agreement specified that the room would be used "for all kinds of meetings, weddings, etc., of Jehovah's Witnesses".
9. On 8 October 1990 forty-three residents of the town requested the

public prosecutor's office to take measures with a view to removing the Jehovah's Witnesses from the district. Following this request the public prosecutor's office instituted criminal proceedings under section 1 of Law no. 1363/1938 (anagastikos nomos). The applicants were accused of having "established ... a place of worship for religious meetings and ceremonies of followers of another denomination and, in particular, of the Jehovah's Witnesses' denomination without authorisation from the recognised ecclesiastical authorities and the Minister of Education and Religious Affairs, such authorisation being required for the construction and operation of a church of any faith".

10. On 19 November 1990 the Alexandroupolis police put seals on the entrance door of the room rented by the applicants.

B. Proceedings in the Alexandroupolis Criminal Court sitting at first instance

11. On 2 July 1991 the Alexandroupolis Criminal Court sitting at first instance (Monomeles Plimmeliodikeio) acquitted the applicants (judgment no. 2092/1991). It found, inter alia, that the room that they had rented "was used only for preaching and reading of the gospel, which are not acts of worshipping God and that consequently it was not a place of worship or a church within the meaning of section 1 (1) of Law no. 1363/1938".

The court ordered the seals to be removed and they were not in fact put back despite the applicants' subsequent conviction (see paragraph 12 below).

C. Proceedings in the Alexandroupolis Criminal Court sitting on appeal

12. On 3 July 1991 the Alexandroupolis public prosecutor's office appealed.

On 21 May 1992 the Alexandroupolis Criminal Court sitting on appeal and composed of three judges (Trimeles Plimmeliodikeio), sentenced each of the accused to thirty days' imprisonment convertible into a pecuniary penalty of 400 drachmas per day of detention, and fined them 6,000 drachmas each (judgment no. 511/1992). It nevertheless accepted that there were mitigating circumstances in that there had been no base motives behind the offence (Article 84 para. 2 of the Criminal Code). The court declined to follow prosecuting counsel's submissions calling for the defendants' acquittal. It held as follows:

"... [the applicants] set up a place of worship for the Jehovah's Witnesses denomination ... without the authorisation of the Ministry of Education and Religious Affairs; in particular, they converted the building that they had rented into a place of worship and ran it as such ..., and on Mondays, Wednesdays and Sundays (afternoons on the first two days and mornings and afternoons on the third) fifty to eighty believers (witnesses) of the Jehovah's Witnesses denomination gathered there and, under the spiritual guidance of the first accused, Mr Dimitrios Katharios, appointed minister of the above-mentioned denomination for the Evros area, read, studied and interpreted passages from the Bible, prayed to God (prayer groups) and sung together psalms accompanied by an organ, without having an authorisation ... from the Ministry of Education and Religious Affairs."

D. Proceedings in the Court of Cassation

13. On 5 June 1992 the applicants appealed on points of law. They argued, inter alia, that section 1 of Law no. 1363/1938 and the obligation to seek an authorisation to establish a place of worship

were contrary to Article 13 of the Greek Constitution and to Article 9 (art. 9) of the European Convention. They also contended that the same provision was incompatible with the right to peaceful assembly guaranteed under Article 11 of the Constitution and Article 11 of the Convention (art. 11).

14. In a judgment (no. 1204/1993) of 7 July 1993 the Court of Cassation dismissed their appeal on the following grounds:

"The provisions [of section 1 of Law no. 1363/1938 and of the royal decree of 20 May/2 June 1939 implementing that Law] are contrary [neither to Article 11 nor to Article 13 of the Constitution], for the right to freedom of worship is not unlimited and may be subject to control. The exercise of this right is subject to certain conditions set down in the Constitution and at law: it must be a known religion, not a secret religion; there must be no prejudice to public order or morals; neither must there be any acts of proselytism, such acts being expressly prohibited in the second and third sentences of Article 13 para. 2 of the Constitution. These provisions are, moreover, not contrary [to the Convention for the Protection of Human Rights and Fundamental Freedoms], Article 9 (art. 9) of which guarantees freedom of religion but Article 9 para. 2 (art. 9-2) of which authorises 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 of others.

The provisions of section 1 of Law no. 1363/1938 ... and of the royal decree of 20 May/2 June 1939, which empower the Minister of Education and Religious Affairs to investigate whether the above-mentioned conditions are met, are contrary neither to the Constitution nor to Article 9 [of the Convention] (art. 9), which do not in any way prohibit investigations of this type; the purpose of such investigations is moreover merely to ensure that the statutory conditions necessary to grant authorisation are met; if these conditions are met, the Minister is obliged to grant the requested authorisation.

..."

PROCEEDINGS BEFORE THE COMMISSION

15. The applicants applied to the Commission on 30 December 1993. They complained of violations of Articles 3, 6 paras. 1, 2 and 3, 7, 8, 9, 10, 11, 13 and 14 of the Convention (art. 3, art. 6-1, art. 6-2, art. 6-3, art. 7, art. 8, art. 9, art. 10, art. 11, art. 13, art. 14) and of Article 1 of Protocol No. 1 (P1-1).

16. On 13 January 1995 and on 16 October 1995 the Commission declared the application (no. 23238/94) admissible as regards the complaints based on Articles 3, 8, 9, 10 and 11 of the Convention (art. 3, art. 8, art. 9, art. 10, art. 11), Article 14 read in conjunction with Articles 10 and 11 of the Convention (art. 14+10, art. 14+11) and Article 1 of Protocol No. 1 (P1-1). It declared the application inadmissible for the rest. In its report of 27 February 1996 (Article 31) (art. 31), it expressed the opinion that:

(a) there had been a violation of Article 9 of the Convention (art. 9) (twenty-seven votes to one);

(b) no separate issue arose under Article 9 of the Convention taken in conjunction with Article 14 (art. 14+9), or under Articles 10 and 11, taken together with Article 14 (art. 14+10, art. 14+11), or individually (art. 10, art. 11) (unanimously);

(c) there had been no violation of Articles 3 and 8 of the

Convention (art. 3, art. 8) (unanimously) or of Article 1 of Protocol No. 1 (P1-1) (twenty-seven votes to one).

The full text of the Commission's opinion and the two partly dissenting opinions contained in the report is reproduced as an annex to this judgment (1).

Note by the Registrar

1. For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1997-III), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

17. At the hearing before the Court the applicants' lawyer stated that the applicants had lodged with the Minister of Education and Religious Affairs on 7 February 1997 a request for authorisation to open a place of worship.

18. By a letter of 12 May 1997, which reached the registry on 20 May 1997, the applicants' lawyer submitted to the Court a request for the case to be struck out of the list. It was worded as follows:

"On behalf of the applicants, Mr Pentidis, Mr Katharios and Mr Stagopoulos, I would inform you that they agree to [their] case being struck out of the list, subject to the Court's considering such a course of action appropriate.

This is now possible because on 23 April 1997 the Minister of Education and Religious Affairs granted the authorisation to open a place of worship (prayer room) for Jehovah's Witnesses in Alexandroupolis.

This solution satisfies the applicants and justifies their request. They consider that it constitutes a friendly settlement of the case and state that the difficulties of a general nature described in detail in their application will now be removed.

..."

The authorisation granted by the Minister of Education and Religious Affairs, which was appended to that letter, was formulated in the following terms:

"Having regard to:

1. The provisions of Laws nos. 1363/1938 and 1672/1939 and of the royal decree of 20 May/2 June 1939;

2. The request of Zissis Pentidis, also signed by four (4) other applicants, 'Jehovah's Witnesses', seeking the authorisation to open a place of worship in Alexandroupolis, at the corner of Chalkidonas Street and Kessanis Street,

I, the undersigned,

authorise the opening of a place of worship for 'Jehovah's Witnesses' in Alexandroupolis at the corner of Chalkidonas Street and Kessanis Street, subject to the following conditions:

1. Preaching and worshipping on these premises shall be conducted under the supervision of Zissis Pentidis;

2. The plaque which must be put up at the entrance to the room

where the place of worship is to be established shall indicate 'Jehovah's Witnesses', as requested by the applicants.

Any alteration of these conditions will require the approval of my department."

In a letter of 21 May 1997, which reached the registry on 22 May, the Government agreed to the striking out of the case.

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

19. The Court notes that the authorisation granted to the applicants by the national authorities constitutes a "fact of a kind to provide a solution of the matter" within the meaning of Rule 49 para. 2 of Rules of Court A. It would however be open to it, having regard to its responsibilities under Article 19 of the Convention (art. 19), to decide to proceed with consideration of the case if a reason of public policy appeared to necessitate such a course (Rule 49 para. 4 of Rules of Court A). However, it finds no such reason.

In this connection, it recalls that in the case of *Manoussakis and Others v. Greece* - whose facts are nevertheless somewhat different from those of the present case - it ruled on the application of Law no. 1363/1938 and the royal decree of 20 May/2 June 1939 to Jehovah's Witnesses who wished to open a place of worship (judgment of 26 September 1996, Reports of Judgments and Decisions 1996-IV). In the same judgment, the Court also indicated the nature and scope of the obligations incumbent on Greece in that respect.

Accordingly 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 notified in writing under Rule 55 para. 2, second sub-paragraph, of Rules of Court A on 9 June 1997.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar