



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

COURT (CHAMBER)

CASE OF KOKKINAKIS v. GREECE

(Application no. 14307/88)

JUDGMENT

STRASBOURG

25 May 1993

In the case of Kokkinakis v. Greece*,

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 the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr R. BERNHARDT,

Mr L.-E. PETTITI,

Mr J. DE MEYER,

Mr N. VALTICOS,

Mr S.K. MARTENS,

Mr I. FOIGHEL,

Mr A.N. LOIZOU,

Mr M.A. LOPES ROCHA,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 27 November 1992 and 19 April 1993,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 21 February 1992, within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 14307/88) against the Hellenic Republic lodged with the Commission under Article 25 (art. 25) by a Greek national, Mr Minos Kokkinakis, on 22 August 1988.

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 7, 9 and 10 (art. 7, art. 9, art. 10).

* The case is numbered 3/1992/348/421. 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.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (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. 3 (b)). On 27 February 1992, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr L.-E. Pettiti, Mr J. De Meyer, Mr S.K. Martens, Mr I. Foighel, Mr A.N. Loizou and Mr M.A. Lopes Rocha (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Greek Government ("the Government"), the Delegate of the Commission and the applicant's lawyer on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's and the Government's memorials on 12 August 1992. On 17 September the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

On 13 August the Commission had produced various documents, as asked by the Registrar at the Government's request.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 November 1992. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr P. GEORGAKOPOULOS, Senior Adviser,
Legal Council of State,

Delegate of the Agent,

Mr A. MARINOS, Judge
of the Supreme Administrative Court,

Counsel;

- for the Commission

Mr C.L. ROZAKIS,

Delegate;

- for the applicant

Mr P. VEGLERIS, dikigoros (lawyer) and Emeritus Professor,
University of Athens,

Counsel,

Mr P. BITSAXIS, dikigoros (lawyer),

Adviser.

The Court heard addresses by Mr Georgakopoulos and Mr Marinos for the Government, Mr Rozakis for the Commission and Mr Vegleris and Mr Bitsaxis for the applicant, as well as replies to its questions.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Mr Minos Kokkinakis, a retired businessman of Greek nationality, was born into an Orthodox family at Sitia (Crete) in 1919. After becoming a Jehovah's Witness in 1936, he was arrested more than sixty times for proselytism. He was also interned and imprisoned on several occasions.

The periods of internment, which were ordered by the administrative authorities on the grounds of his activities in religious matters, were spent on various islands in the Aegean (thirteen months in Amorgos in 1938, six in Milos in 1940 and twelve in Makronisos in 1949).

The periods of imprisonment, to which he was sentenced by the courts, were for acts of proselytism (three sentences of two and a half months in 1939 - he was the first Jehovah's Witness to be convicted under the Laws of the Metaxas Government (see paragraph 16 below) -, four and a half months in 1949 and two months in 1962), conscientious objection (eighteen and a half months in 1941) and holding a religious meeting in a private house (six months in 1952).

Between 1960 and 1970 the applicant was arrested four times and prosecuted but not convicted.

7. On 2 March 1986 he and his wife called at the home of Mrs Kyriakaki in Sitia and engaged in a discussion with her. Mrs Kyriakaki's husband, who was the cantor at a local Orthodox church, informed the police, who arrested Mr and Mrs Kokkinakis and took them to the local police station, where they spent the night of 2-3 March 1986.

A. Proceedings in the Lasithi Criminal Court

8. The applicant and his wife were prosecuted under section 4 of Law no. 1363/1938 making proselytism an offence (see paragraph 16 below) and were committed for trial at the Lasithi Criminal Court (*trimeles plimmielodikio*), which heard the case on 20 March 1986.

9. After dismissing an objection that section 4 of that Law was unconstitutional, the Criminal Court heard evidence from Mr and Mrs Kyriakaki, a defence witness and the two defendants and gave judgment on the same day:

"[The defendants], who belong to the Jehovah's Witnesses sect, attempted to proselytise and, directly or indirectly, to intrude on the religious beliefs of Orthodox Christians, with the intention of undermining those beliefs, by taking advantage of their inexperience, their low intellect and their naïvety. In particular, they went to the home of [Mrs Kyriakaki] ... and told her that they brought good news; by insisting in a pressing manner, they gained admittance to the house and began to read from a book

on the Scriptures which they interpreted with reference to a king of heaven, to events which had not yet occurred but would occur, etc., encouraging her by means of their judicious, skilful explanations ... to change her Orthodox Christian beliefs."

The court found Mr and Mrs Kokkinakis guilty of proselytism and sentenced each of them to four months' imprisonment, convertible (under Article 82 of the Criminal Code) into a pecuniary penalty of 400 drachmas per day's imprisonment, and a fine of 10,000 drachmas. Under Article 76 of the Criminal Code, it also ordered the confiscation and destruction of four booklets which they had been hoping to sell to Mrs Kyriakaki.

B. The proceedings in the Crete Court of Appeal

10. Mr and Mrs Kokkinakis appealed against this judgment to the Crete Court of Appeal (Efetio). The Court of Appeal quashed Mrs Kokkinakis's conviction and upheld her husband's but reduced his prison sentence to three months and converted it into a pecuniary penalty of 400 drachmas per day. The following reasons were given for its judgment, which was delivered on 17 March 1987:

"... it was proved that, with the aim of disseminating the articles of faith of the Jehovah's Witnesses sect (airesi), to which the defendant adheres, he attempted, directly and indirectly, to intrude on the religious beliefs of a person of a different religious persuasion from his own, [namely] the Orthodox Christian faith, with the intention of changing those beliefs, by taking advantage of her inexperience, her low intellect and her naïvety. More specifically, at the time and place indicated in the operative provision, he visited Mrs Georgia Kyriakaki and after telling her he brought good news, pressed her to let him into the house, where he began by telling her about the politician Olof Palme and by expounding pacifist views. He then took out a little book containing professions of faith by adherents of the aforementioned sect and began to read out passages from Holy Scripture, which he skilfully analysed in a manner that the Christian woman, for want of adequate grounding in doctrine, could not challenge, and at the same time offered her various similar books and importunately tried, directly and indirectly, to undermine her religious beliefs. He must consequently be declared guilty of the above-mentioned offence, in accordance with the operative provision hereinafter, while the other defendant, his wife Elissavet, must be acquitted, seeing that there is no evidence that she participated in the offence committed by her husband, whom she merely accompanied ..."

One of the appeal judges dissented, and his opinion, which was appended to the judgment, read as follows:

"... the first defendant should also have been acquitted, as none of the evidence shows that Georgia Kyriakaki ... was particularly inexperienced in Orthodox Christian doctrine, being married to a cantor, or of particularly low intellect or particularly naïve, such that the defendant was able to take advantage and ... [thus] induce her to become a member of the Jehovah's Witnesses sect."

According to the record of the hearing of 17 March 1987, Mrs Kyriakaki had given the following evidence:

"They immediately talked to me about Olof Palme, whether he was a pacifist or not, and other subjects that I can't remember. They talked to me about things I did not understand very well. It was not a discussion but a constant monologue by them. ... If they had told me they were Jehovah's Witnesses, I would not have let them in. I don't recall whether they spoke to me about the Kingdom of Heaven. They stayed in the house about ten minutes or a quarter of an hour. What they told me was religious in nature, but I don't know why they told it to me. I could not know at the outset what the purpose of their visit was. They may have said something to me at the time with a view to undermining my religious beliefs [However,] the discussion did not influence my beliefs ..."

C. The proceedings in the Court of Cassation

11. Mr Kokkinakis appealed on points of law. He maintained, *inter alia*, that the provisions of Law no. 1363/1938 contravened Article 13 of the Constitution (see paragraph 13 below).

12. The Court of Cassation (Arios Pagos) dismissed the appeal on 22 April 1988. It rejected the plea of unconstitutionality for the following reasons:

"Section 4 of Law no. 1363/1938, substituted by section 2 of Law no. 1672/1939 providing for the implementation of Articles 1 and 2 of the Constitution and enacted under the 1911 Constitution then in force, Article 1 of which prohibited proselytism and any other interference with the dominant religion in Greece, namely the Christian Eastern Orthodox Church, not only does not contravene Article 13 of the 1975 Constitution but is fully compatible with the Constitution, which recognises the inviolability of freedom of conscience in religious matters and provides for freedom to practise any known religion, subject to a formal provision in the same Constitution prohibiting proselytism in that proselytism is forbidden in general whatever the religion against which it is directed, including therefore the dominant religion in Greece, in accordance with Article 3 of the 1975 Constitution, namely the Christian Eastern Orthodox Church."

It also noted that the Crete Court of Appeal had given detailed reasons for its judgment and had complied with the 1975 Constitution in applying the impugned provisions.

In the opinion of a dissenting member, the Court of Cassation should have quashed the judgment of the court below for having wrongly applied section 4 of Law no. 1363/1938 in that it had made no mention of the promises whereby the defendant had allegedly attempted to intrude on Mrs Kyriakaki's religious beliefs and had given no particulars of Mrs Kyriakaki's inexperience and low intellect.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Statutory provisions

1. The Constitution

13. The relevant Articles of the 1975 Constitution read as follows:

Article 3

"1. The dominant religion in Greece is that of the Christian Eastern Orthodox Church. The Greek Orthodox Church, which recognises as its head Our Lord Jesus Christ, is indissolubly united, doctrinally, with the Great Church of Constantinople and with any other Christian Church in communion with it (omodoxi), immutably observing, like the other Churches, the holy apostolic and synodical canons and the holy traditions. It is autocephalous and is administered by the Holy Synod, composed of all the bishops in office, and by the standing Holy Synod, which is an emanation of it constituted as laid down in the Charter of the Church and in accordance with the provisions of the Patriarchal Tome of 29 June 1850 and the Synodical Act of 4 September 1928.

2. The ecclesiastical regime in certain regions of the State shall not be deemed contrary to the provisions of the foregoing paragraph.

3. The text of the Holy Scriptures is unalterable. No official translation into any other form of language may be made without the prior consent of the autocephalous Greek Church and the Great Christian Church at Constantinople."

Article 13

"1. Freedom of conscience in religious matters is inviolable. The enjoyment of personal and political rights shall not depend on an individual's religious beliefs.

2. There shall be freedom to practise any known religion; individuals shall be free to perform their rites of worship without hindrance and under the protection of the law. The performance of rites of worship must not prejudice public order or public morals. Proselytism is prohibited.

3. The ministers of all known religions shall be subject to the same supervision by the State and to the same obligations to it as those of the dominant religion.

4. No one may be exempted from discharging his obligations to the State or refuse to comply with the law by reason of his religious convictions.

5. No oath may be required other than under a law which also determines the form of it."

14. The Christian Eastern Orthodox Church, which during nearly four centuries of foreign occupation symbolised the maintenance of Greek

culture and the Greek language, took an active part in the Greek people's struggle for emancipation, to such an extent that Hellenism is to some extent identified with the Orthodox faith.

A royal decree of 23 July 1833 entitled "Proclamation of the Independence of the Greek Church" described the Orthodox Church as "autocephalous". Greece's successive Constitutions have referred to the Church as being "dominant". The overwhelming majority of the population are members of it, and, according to Greek conceptions, it represents *de jure* and *de facto* the religion of the State itself, a good number of whose administrative and educational functions (marriage and family law, compulsory religious instruction, oaths sworn by members of the Government, etc.) it moreover carries out. Its role in public life is reflected by, among other things, the presence of the Minister of Education and Religious Affairs at the sessions of the Church hierarchy at which the Archbishop of Athens is elected and by the participation of the Church authorities in all official State events; the President of the Republic takes his oath of office according to Orthodox ritual (Article 33 para. 2 of the Constitution); and the official calendar follows that of the Christian Eastern Orthodox Church.

15. Under the reign of Otto I (1832-62), the Orthodox Church, which had long complained of a Bible society's propaganda directed at young Orthodox schoolchildren on behalf of the Evangelical Church, managed to get a clause added to the first Constitution (1844) forbidding "proselytism and any other action against the dominant religion". The Constitutions of 1864, 1911 and 1952 reproduced the same clause. The 1975 Constitution prohibits proselytism in general (Article 13 para. 2 in fine - see paragraph 13 above): the ban covers all "known religions", meaning those whose doctrines are not apocryphal and in which no secret initiation is required of neophytes.

2. Laws nos. 1363/1938 and 1672/1939

16. During the dictatorship of Metaxas (1936-40) proselytism was made a criminal offence for the first time by section 4 of Law (anagastikos nomos) no. 1363/1938. The following year that section was amended by section 2 of Law no. 1672/1939, in which the meaning of the term "proselytism" was clarified:

"1. Anyone engaging in proselytism shall be liable to imprisonment and a fine of between 1,000 and 50,000 drachmas; he shall, moreover, be subject to police supervision for a period of between six months and one year to be fixed by the court when convicting the offender.

The term of imprisonment may not be commuted to a fine.

2. By 'proselytism' is meant, in particular, any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion (eterodoxos),

with the aim of undermining those beliefs, either by any kind of inducement or promise of an inducement or moral support or material assistance, or by fraudulent means or by taking advantage of his inexperience, trust, need, low intellect or naïvety.

3. The commission of such an offence in a school or other educational establishment or a philanthropic institution shall constitute a particularly aggravating circumstance."

B. Case-law

17. In a judgment numbered 2276/1953 a full court of the Supreme Administrative Court (Symvoulío tis Epikratias) gave the following definition of proselytism:

"Article 1 of the Constitution, which establishes the freedom to practise any known religion and to perform rites of worship without hindrance and prohibits proselytism and all other activities directed against the dominant religion, that of the Christian Eastern Orthodox Church, means that purely spiritual teaching does not amount to proselytism, even if it demonstrates the errors of other religions and entices possible disciples away from them, who abandon their original religions of their own free will; this is because spiritual teaching is in the nature of a rite of worship performed freely and without hindrance. Outside such spiritual teaching, which may be freely given, any determined, importunate attempt to entice disciples away from the dominant religion by means that are unlawful or morally reprehensible constitutes proselytism as prohibited by the aforementioned provision of the Constitution."

18. The Greek courts have held that persons were guilty of proselytism who had: likened the saints to "figures adorning the wall", St Gerasimos to "a body stuffed with cotton" and the Church to "a theatre, a market, a cinema"; preached, while displaying a painting showing a crowd of wretched people in rags, that "such are all those who do not embrace my faith" (Court of Cassation, judgment no. 271/1932, Themis XVII, p. 19); promised Orthodox refugees housing on specially favourable terms if they adhered to the Uniate faith (Court of Appeal of the Aegean, judgment no. 2950/1930, Themis B, p. 103); offered a scholarship for study abroad (Court of Cassation, judgment no. 2276/1953); sent Orthodox priests booklets with the recommendation that they should study them and apply their content (Court of Cassation, judgment no. 59/1956, Nomiko Vima, 1956, no. 4, p. 736); distributed "so-called religious" books and booklets free to "illiterate peasants" or to "young schoolchildren" (Court of Cassation, judgment no. 201/1961, Criminal Annals XI, p. 472); or promised a young seamstress an improvement in her position if she left the Orthodox Church, whose priests were alleged to be "exploiters of society" (Court of Cassation, judgment no. 498/1961, Criminal Annals XII, p. 212).

The Court of Cassation has ruled that the definition of proselytism in section 4 of Law no. 1363/1938 does not contravene the principle that only the law can define a crime and prescribe a penalty. The Piraeus Criminal Court followed it in an order (voulevma) numbered 36/1962 (Greek

Lawyers' Journal, 1962, p. 421), adding that the expression "in particular" in section 4 of Law no. 1363/1938 (see paragraph 16 above) referred to the means used by the person committing the offence and not to the description of the *actus reus*.

19. Until 1975 the Court of Cassation held that the list in section 4 was not exhaustive. In a judgment numbered 997/1975 (Criminal Annals XXVI, p. 380) it added the following clarification:

"... it follows from the provisions of section 4 ... that proselytism consists in a direct or indirect attempt to impinge on religious beliefs by any of the means separately listed in the Law."

20. More recently courts have convicted Jehovah's Witnesses for professing the sect's doctrine "importunately" and accusing the Orthodox Church of being a "source of suffering for the world" (Salonika Court of Appeal, judgment no. 2567/1988); for entering other people's homes in the guise of Christians wishing to spread the New Testament (Florina Court of First Instance, judgment no. 128/1989); and for attempting to give books and booklets to an Orthodox priest at the wheel of his car after stopping him (Lasithi Court of First Instance, judgment no. 357/1990).

In a judgment numbered 1304/1982 (Criminal Annals XXXII, p. 502), on the other hand, the Court of Cassation quashed a judgment of the Athens Court of Appeal (no. 5434/1981) as having no basis in law because, when convicting a Jehovah's Witness, the Court of Appeal had merely reiterated the words of the indictment and had thus not explained how "the importunate teaching of the doctrines of the Jehovah's Witnesses sect" or "distribution of the sect's booklets at a minimal price" had amounted to an attempt to intrude on the complainants' religious beliefs, or shown how the defendant had taken advantage of their "inexperience" and "low intellect". The Court of Cassation remitted the case to a differently constituted bench of the Court of Appeal, which acquitted the defendant.

Similarly, it has been held in several court decisions that the offence of proselytism was not made out where there had merely been a discussion about the beliefs of the Jehovah's Witnesses, where booklets had been distributed from door to door (Patras Court of Appeal, judgment no. 137/1988) or in the street (Larissa Court of Appeal, judgment no. 749/1986) or where the tenets of the sect had been explained without any deception to an Orthodox Christian (Trikkala Criminal Court, judgment no. 186/1986). Lastly, it has been held that being an "illiterate peasant" is not sufficient to establish the "naïvety", referred to in section 4, of the person whom the alleged proselytiser is addressing (Court of Cassation, judgment no. 1155/1978).

21. After the revision of the Constitution in 1975, the Jehovah's Witnesses brought legal proceedings to challenge the constitutionality of section 4 of Law no. 1363/1938. They complained that the description of the offence was vague, but above all they objected to the actual title of the

Law, which indicated that the Law was designed to preserve Articles 1 and 2 of the Constitution in force at the time (the 1911 Constitution - see paragraph 12 above), which prohibited proselytism directed against the dominant religion. In the current Constitution this prohibition is extended to all religions and furthermore is no longer included in the chapter concerning religion but in the one dealing with civil and social rights, and more particularly in Article 13, which guarantees freedom of conscience in religious matters.

The courts have always dismissed such objections of unconstitutionality, although they have been widely supported in legal literature.

III. THE JEHOVAH'S WITNESSES IN GREECE

22. The Jehovah's Witnesses movement appeared in Greece at the beginning of the twentieth century. Estimates of its membership today vary between 25,000 and 70,000. Members belong to one of 338 congregations, the first of which was formed in Athens in 1922.

23. Since the revision of the Constitution in 1975 the Supreme Administrative Court has held on several occasions that the Jehovah's Witnesses come within the definition of a "known religion" (judgments nos. 2105 and 2106/1975, 4635/1977, 2484/1980, 4620/1985, 790 and 3533/1986 and 3601/1990). Some first-instance courts, however, continue to rule to the contrary (Heraklion Court of First Instance, judgments nos. 272/1984 and 87/1986). In 1986 the Supreme Administrative Court held (in judgment no. 3533/1986) that a ministerial decision refusing the appointment of a Jehovah's Witness as a literature teacher was contrary to freedom of conscience in religious matters and hence to the Greek Constitution.

24. According to statistics provided by the applicant, 4,400 Jehovah's Witnesses were arrested between 1975 (when democracy was restored) and 1992, and 1,233 of these were committed for trial and 208 convicted. Earlier, several Jehovah's Witnesses had been convicted under Law no. 117/1936 for the prevention of communism and its effects and Law no. 1075/1938 on preserving the social order.

The Government have not challenged the applicant's figures. They have, however, pointed out that there have been signs of a decline in the frequency of convictions of Jehovah's Witnesses, only 7 out of a total of 260 people arrested having been convicted in 1991 and 1992.

PROCEEDINGS BEFORE THE COMMISSION

25. Mr Kokkinakis applied to the Commission on 22 August 1988. He claimed that his conviction for proselytism was in breach of the rights secured in Articles 7, 9 and 10 (art. 7, art. 9, art. 10) of the Convention. He also relied on Article 5 para. 1 and Article 6 paras. 1 and 2 (art. 5-1, art. 6-1, art. 6-2).

26. The Commission declared the application (no. 14307/88) admissible on 7 December 1990 except for the complaints based on Articles 5 and 6 (art. 5, art. 6), which it declared inadmissible as being manifestly ill-founded. In its report of 3 December 1991 (made under Article 31) (art. 31), the Commission expressed the opinion that

- (a) there had been no violation of Article 7 (art. 7) (by eleven votes to two);
- (b) there had been a violation of Article 9 (art. 9) (unanimously); and
- (c) no separate issue arose under Article 10 (art. 10) (by twelve votes to one).

The full text of the Commission's opinion and of the two separate opinions contained in the report is reproduced as an annex to this judgment*.

AS TO THE LAW

27. Mr Kokkinakis complained of his conviction for proselytism; he considered it contrary to Articles 7, 9 and 10 (art. 7, art. 9, art. 10) of the Convention, and to Article 14 taken together with Article 9 (art. 14+9).

I. ALLEGED VIOLATION OF ARTICLE 9 (art. 9)

28. The applicant's complaints mainly concerned a restriction on the exercise of his freedom of religion. The Court will accordingly begin by looking at the issues relating to Article 9 (art. 9), which provides:

"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."

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 260-A of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

29. The applicant did not only challenge what he claimed to be the wrongful application to him of section 4 of Law no. 1363/1938. His submission concentrated on the broader problem of whether that enactment was compatible with the right enshrined in Article 9 (art. 9) of the Convention, which, he argued, having been part of Greek law since 1953, took precedence under the Constitution over any contrary statute. He pointed to the logical and legal difficulty of drawing any even remotely clear dividing-line between proselytism and freedom to change one's religion or belief and, either alone or in community with others, in public and in private, to manifest it, which encompassed all forms of teaching, publication and preaching between people.

The ban on proselytism, which was made a criminal offence during the Metaxas dictatorship, was not only unconstitutional, Mr Kokkinakis submitted, but it also formed, together with the other clauses of Law no. 1363/1938, "an arsenal of prohibitions and threats of punishment" hanging over the adherents of all beliefs and all creeds.

Mr Kokkinakis complained, lastly, of the selective application of this Law by the administrative and judicial authorities; it would surpass "even the wildest academic hypothesis" to imagine, for example, the possibility of a complaint being made by a Catholic priest or by a Protestant clergyman against an Orthodox Christian who had attempted to entice one of his flock away from him. It was even less likely that an Orthodox Christian would be prosecuted for proselytising on behalf of the "dominant religion".

30. In the Government's submission, there was freedom to practise all religions in Greece; religious adherents enjoyed the right both to express their beliefs freely and to try to influence the beliefs of others, Christian witness being a duty of all Churches and all Christians. There was, however, a radical difference between bearing witness and "proselytism that is not respectable", the kind that consists in using deceitful, unworthy and immoral means, such as exploiting the destitution, low intellect and inexperience of one's fellow beings. Section 4 prohibited this kind of proselytism - the "misplaced" proselytism to which the European Court referred in its *Kjeldsen, Busk Madsen and Pedersen v. Denmark* judgment of 7 December 1976 (Series A no. 23, p. 28, para. 54) - and not straightforward religious teaching. Furthermore, it was precisely this definition of proselytism that had been adopted by the Greek courts.

A. General principles

31. As enshrined in Article 9 (art. 9), freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics,

sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.

While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to "manifest [one's] religion". Bearing witness in words and deeds is bound up with the existence of religious convictions.

According to Article 9 (art. 9), freedom to manifest one's religion is not only exercisable in community with others, "in public" and within the circle of those whose faith one shares, but can also be asserted "alone" and "in private"; furthermore, it includes in principle the right to try to convince one's neighbour, for example through "teaching", failing which, moreover, "freedom to change [one's] religion or belief", enshrined in Article 9 (art. 9), would be likely to remain a dead letter.

32. The requirements of Article 9 (art. 9) are reflected in the Greek Constitution in so far as Article 13 of the latter declares that freedom of conscience in religious matters is inviolable and that there shall be freedom to practise any known religion (see paragraph 13 above). Jehovah's Witnesses accordingly enjoy both the status of a "known religion" and the advantages flowing from that as regards observance (see paragraphs 22-23 above).

33. The fundamental nature of the rights guaranteed in Article 9 para. 1 (art. 9-1) is also reflected in the wording of the paragraph providing for limitations on them. Unlike the second paragraphs of Articles 8, 10 and 11 (art. 8-2, art. 10-2, art. 11-2) which cover all the rights mentioned in the first paragraphs of those Articles (art. 8-1, art. 10-1, art. 11-1), that of Article 9 (art. 9-1) refers only to "freedom to manifest one's religion or belief". In so doing, it recognises that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected.

34. According to the Government, such restrictions were to be found in the Greek legal system. Article 13 of the 1975 Constitution forbade proselytism in respect of all religions without distinction; and section 4 of Law no. 1363/1938, which attached a criminal penalty to this prohibition, had been upheld by several successive democratic governments notwithstanding its historical and political origins. The sole aim of section 4 was to protect the beliefs of others from activities which undermined their dignity and personality.

35. The Court will confine its attention as far as possible to the issue raised by the specific case before it. It must nevertheless look at the foregoing provisions, since the action complained of by the applicant arose from the application of them (see, *mutatis mutandis*, the *de Geouffre de la*

Pradelle v. France judgment of 16 December 1992, Series A no. 253-B, p. 42, para. 31).

B. Application of the principles

36. The sentence passed by the Lasithi Criminal Court and subsequently reduced by the Crete Court of Appeal (see paragraphs 9-10 above) amounts to an interference with the exercise of Mr Kokkinakis's right to "freedom to manifest [his] religion or belief". Such an interference is contrary to Article 9 (art. 9) unless it is "prescribed by law", directed at one or more of the legitimate aims in paragraph 2 (art. 9-2) and "necessary in a democratic society" for achieving them.

1. "Prescribed by law"

37. The applicant said that his submissions relating to Article 7 (art. 7) also applied to the phrase "prescribed by law". The Court will therefore examine them from this point of view.

38. Mr Kokkinakis impugned the very wording of section 4 of Law no. 1363/1938. He criticised the absence of any description of the "objective substance" of the offence of proselytism. He thought this deliberate, as it would tend to make it possible for any kind of religious conversation or communication to be caught by the provision. He referred to the risk of "extendibility" by the police and often by the courts too of the vague terms of the section, such as "in particular" and "indirect attempt" to intrude on the religious beliefs of others. Punishing a non-Orthodox Christian even when he was offering "moral support or material assistance" was tantamount to punishing an act that any religion would prescribe and that the Criminal Code required in certain emergencies. Law no. 1672/1939 (see paragraph 16 above) had, without more, stripped the initial wording of section 4 of its "repetitive verbiage"; it had retained all the "extendible, catch-all" expressions, merely using a more concise but equally "pedantic" style designed to ensure that non-Orthodox Christians were permanently gagged. Consequently, no citizen could regulate his conduct on the basis of this enactment.

Furthermore, section 4 of Law no. 1363/1938 was incompatible with Article 13 of the Constitution.

39. The Government, on the other hand, maintained that section 4 defined proselytism precisely and specifically; it listed all the ingredients of the offence. The use of the adverbial phrase "in particular" was of no importance, as it related only to the means by which the offence could be committed; indicative lists of this kind were, moreover, commonly included in criminal statutes.

Lastly, the objective substance of the offence was not lacking but consisted in the attempt to change the essentials of the religious beliefs of others.

40. The Court has already noted that the wording of many statutes is not absolutely precise. The need to avoid excessive rigidity and to keep pace with changing circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague (see, for example and *mutatis mutandis*, the *Müller and Others v. Switzerland* judgment of 24 May 1988, Series A no. 133, p. 20, para. 29). Criminal-law provisions on proselytism fall within this category. The interpretation and application of such enactments depend on practice.

In this instance there existed a body of settled national case-law (see paragraphs 17-20 above). This case-law, which had been published and was accessible, supplemented the letter of section 4 and was such as to enable Mr Kokkinakis to regulate his conduct in the matter.

As to the constitutionality of section 4 of Law no. 1363/1938, the Court reiterates that it is, in the first instance, for the national authorities, and in particular the courts, to interpret and apply domestic law (see, as the most recent authority, the *Hadjianastassiou v. Greece* judgment of 16 December 1992, Series A no. 252, p. 18, para. 42). And the Greek courts that have had to deal with the issue have ruled that there is no incompatibility (see paragraph 21 above).

41. The measure complained of was therefore "prescribed by law" within the meaning of Article 9 para. 2 (art. 9-2) of the Convention.

2. Legitimate aim

42. The Government contended that a democratic State had to ensure the peaceful enjoyment of the personal freedoms of all those living on its territory. If, in particular, it was not vigilant to protect a person's religious beliefs and dignity from attempts to influence them by immoral and deceitful means, Article 9 para. 2 (art. 9-2) would in practice be rendered wholly nugatory.

43. In the applicant's submission, religion was part of the "constantly renewable flow of human thought" and it was impossible to conceive of its being excluded from public debate. A fair balance of personal rights made it necessary to accept that others' thought should be subject to a minimum of influence, otherwise the result would be a "strange society of silent animals that [would] think but ... not express themselves, that [would] talk but ... not communicate, and that [would] exist but ... not coexist".

44. Having regard to the circumstances of the case and the actual terms of the relevant courts' decisions, the Court considers that the impugned measure was in pursuit of a legitimate aim under Article 9 para. 2 (art. 9-2), namely the protection of the rights and freedoms of others, relied on by the Government.

3. *"Necessary in a democratic society"*

45. Mr Kokkinakis did not consider it necessary in a democratic society to prohibit a fellow citizen's right to speak when he came to discuss religion with his neighbour. He was curious to know how a discourse delivered with conviction and based on holy books common to all Christians could infringe the rights of others. Mrs Kyriakaki was an experienced adult woman with intellectual abilities; it was not possible, without flouting fundamental human rights, to make it a criminal offence for a Jehovah's Witness to have a conversation with a cantor's wife. Moreover, the Crete Court of Appeal, although the facts before it were precise and absolutely clear, had not managed to determine the direct or indirect nature of the applicant's attempt to intrude on the complainant's religious beliefs; its reasoning showed that it had convicted the applicant "not for something he had done but for what he was".

The Commission accepted this argument in substance.

46. The Government maintained, on the contrary, that the Greek courts had based themselves on plain facts which amounted to the offence of proselytism: Mr Kokkinakis's insistence on entering Mrs Kyriakaki's home on a false pretext; the way in which he had approached her in order to gain her trust; and his "skilful" analysis of the Holy Scriptures calculated to "delude" the complainant, who did not possess any "adequate grounding in doctrine" (see paragraphs 9-10 above). They pointed out that if the State remained indifferent to attacks on freedom of religious belief, major unrest would be caused that would probably disturb the social peace.

47. The Court has consistently held that a certain margin of appreciation is to be left to the Contracting States in assessing the existence and extent of the necessity of an interference, but this margin is subject to European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court's task is to determine whether the measures taken at national level were justified in principle and proportionate.

In order to rule on this latter point, the Court must weigh the requirements of the protection of the rights and liberties of others against the conduct of which the applicant stood accused. In exercising its supervisory jurisdiction, the Court must look at the impugned judicial decisions against the background of the case as a whole (see, *inter alia* and *mutatis mutandis*, the *Barfod v. Denmark* judgment of 22 February 1989, Series A no. 149, p. 12, para. 28).

48. First of all, a distinction has to be made between bearing Christian witness and improper proselytism. The former corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the World Council of Churches describes as an essential mission and a responsibility of every Christian and every Church. The latter represents a corruption or deformation of it. It may, according to the same report, take

the form of activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need; it may even entail the use of violence or brainwashing; more generally, it is not compatible with respect for the freedom of thought, conscience and religion of others.

Scrutiny of section 4 of Law no. 1363/1938 shows that the relevant criteria adopted by the Greek legislature are reconcilable with the foregoing if and in so far as they are designed only to punish improper proselytism, which the Court does not have to define in the abstract in the present case.

49. The Court notes, however, that in their reasoning the Greek courts established the applicant's liability by merely reproducing the wording of section 4 and did not sufficiently specify in what way the accused had attempted to convince his neighbour by improper means. None of the facts they set out warrants that finding.

That being so, it has not been shown that the applicant's conviction was justified in the circumstances of the case by a pressing social need. The contested measure therefore does not appear to have been proportionate to the legitimate aim pursued or, consequently, "necessary in a democratic society ... for the protection of the rights and freedoms of others".

50. In conclusion, there has been a breach of Article 9 (art. 9) of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 7 (art. 7)

51. Mr Kokkinakis also relied on Article 7 (art. 7), which provides:

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

In his submission, for a criminal provision to be compatible with this Article (art. 7) it must be sufficiently precise and clear (see paragraphs 37-38 above). This was not the case, he said, with section 4 of Law no. 1363/1938.

52. The Court points out that Article 7 para. 1 (art. 7-1) of the Convention is not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy; it follows from this that an offence must be clearly

defined in law. This condition is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him liable.

It appears that this was indeed so in the present case; on this point the Court refers to paragraphs 40-41 of this judgment.

53. In conclusion, there has been no breach of Article 7 (art. 7) of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 10 (art. 10)

54. The applicant further relied on his freedom of expression, as secured in Article 10 (art. 10). His conviction, he said, struck not only at the dissemination of his religious opinions but also at that of general socio-philosophical opinions, since the Crete Court of Appeal had noted that he had talked to Mrs Kyriakaki about the politician Olof Palme and had expounded pacifist views.

55. Having regard to its decision on Article 9 (art. 9) (see paragraph 50 above), the Court, like the Commission, considers it unnecessary to examine this complaint.

IV. ALLEGED VIOLATION OF ARTICLE 14 TAKEN TOGETHER WITH ARTICLE 9 (art. 14+9)

56. In his memorial of 5 August 1992 the applicant also claimed to be the victim of discrimination contrary to Article 14 taken together with Article 9 (art. 14+9). He submitted that discrimination arose from the defects in section 4 of Law no. 1363/1938 or from the use made of it.

57. Although not raised before the Commission, this complaint relates to the same facts as do those made under Articles 7 and 9 (art. 7, art. 9); having regard to the conclusion in paragraph 50 above, however, the Court holds that it is unnecessary to deal with it.

V. APPLICATION OF ARTICLE 50 (art. 50)

58. Under Article 50 (art. 50) of the Convention,

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

59. At the hearing the applicant sought, firstly, compensation in the amount of 500,000 drachmas (GRD) for non-pecuniary damage.

The Court considers that he has sustained such damage and that, notwithstanding the Government's opinion to the contrary, a finding of a breach is not sufficient to compensate him for it. Making its assessment on an equitable basis as required by Article 50 (art. 50), it awards him GRD 400,000 under this head.

60. For costs and expenses relating to the proceedings in Greece and before the Convention institutions Mr Kokkinakis sought the sum of GRD 2,789,500, of which he provided particulars.

The Government judged this amount to be excessive. More especially, they contested the need (a) for the applicant to be represented by two lawyers in the Greek courts and before the European Court and for him to be defended by Athenian lawyers in the Cretan courts; and (b) for Mr Kokkinakis to have attended the Court of Cassation hearing.

Like the Delegate of the Commission, the Court nevertheless finds the claim reasonable, and consequently allows it in full.

FOR THESE REASONS, THE COURT

1. Holds by six votes to three that there has been a breach of Article 9 (art. 9);
2. Holds by eight votes to one that there has been no breach of Article 7 (art. 7);
3. Holds unanimously that it is unnecessary to examine the case under Article 10 (art. 10) or under Article 14 taken together with Article 9 (art. 14+9);
4. Holds unanimously that the respondent State is to pay the applicant, within three months, 400,000 (four hundred thousand) drachmas in respect of non-pecuniary damage and 2,789,500 (two million seven hundred and eighty-nine thousand five hundred) drachmas in respect of costs and expenses.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 May 1993.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) partly concurring opinion of Mr Pettiti;
- (b) concurring opinion of Mr De Meyer;
- (c) dissenting opinion of Mr Valticos;
- (d) partly dissenting opinion of Mr Martens;
- (e) joint dissenting opinion of Mr Foighel and Mr Loizou.

R.R.
M.-A.E.

PARTLY CONCURRING OPINION OF JUDGE PETTITI

(Translation)

I was in the majority which voted that there had been a breach of Article 9 (art. 9) but I considered that the reasoning given in the judgment could usefully have been expanded.

Furthermore, I parted company with the majority in that I also took the view that the current criminal legislation in Greece on proselytism was in itself contrary to Article 9 (art. 9).

The Kokkinakis case is of particular importance. It is the first real case concerning freedom of religion to have come before the European Court since it was set up and it has come up for decision at a time when the United Nations and Unesco are preparing a World Year for Tolerance, which is to give further effect to the 1981 United Nations Declaration against all forms of intolerance, which was adopted after twenty years of negotiations.

In the first place, I take the view that what contravenes Article 9 (art. 9) is the Law. I agree with acknowledging its foreseeability. But the definition is such as to make it possible at any moment to punish the slightest attempt by anyone to convince a person he is addressing.

The reasoning adopted by the majority with the intention of confining themselves to the particular case is tantamount to supervising the national court in respect of the degree of severity of the sentence passed, whereas what is in issue is the very principle of the punishment and it is not the European Court's function to rule on the degree of severity of sentences in domestic law. The Court must abide by its decisions in the cases of *Dudgeon v. the United Kingdom* (judgment of 22 October 1981, Series A no. 45, pp. 18-19, para. 41) and *Norris v. Ireland* (judgment of 26 October 1988, Series A no. 142, p. 16, para. 33): the mere threat of applying a provision, even one that has fallen into disuse, is sufficient to constitute a breach.

The expression "proselytism that is not respectable", which is a criterion used by the Greek courts when applying the Law, is sufficient for the enactment and the case-law applying it to be regarded as contrary to Article 9 (art. 9).

The Government themselves recognised that the applicant had been prosecuted because he had tried to influence the person he was talking to by taking advantage of her inexperience in matters of doctrine and by exploiting her low intellect. It was therefore not a question of protecting others against physical or psychological coercion but of giving the State the possibility of arrogating to itself the right to assess a person's weakness in order to punish a proselytiser, an interference that could become dangerous if resorted to by an authoritarian State.

The vagueness of the charge and the lack of any clear definition of proselytism increase the misgivings to which the Greek Law gives rise. Even if it is accepted that the foreseeability of the law in Greece as it might apply to proselytes was sufficient, the fact remains that the haziness of the definition leaves too wide a margin of interpretation for determining criminal penalties.

It may be asked whether the very principle of applying a criminal statute to proselytism is compatible with Article 9 (art. 9) of the Convention.

Criminal policy could be implemented by means of the technique of creating specific criminal offences covering coercive acts and the activities of certain sects which truly attack human freedom and dignity. Minors can be protected by means of precise criminal provisions. The protection of adults can be achieved by fiscal and welfare legislation and by the ordinary law on misrepresentation, failure to assist persons in danger and intentional or negligent injury (even physical).

At all events, even if the principle is accepted, it should not lead to the retention of legislation that provides for vague criminal offences which leave it to the court's subjective assessment whether a defendant is convicted or acquitted. In its judgment in the *Lingens v. Austria* case (8 July 1986, Series A no. 103) concerning freedom of expression the European Court noted its misgivings about the freedom left to the courts to assess the concept of truth.

Interpretation criteria in relation to proselytism that are as unverifiable as "respectable or not respectable" and "misplaced" cannot guarantee legal certainty.

Proselytism is linked to freedom of religion; a believer must be able to communicate his faith and his beliefs in the religious sphere as in the philosophical sphere. Freedom of religion and conscience is a fundamental right and this freedom must be able to be exercised for the benefit of all religions and not for the benefit of a single Church, even if this has traditionally been the established Church or "dominant religion".

Freedom of religion and conscience certainly entails accepting proselytism, even where it is "not respectable". Believers and agnostic philosophers have a right to expound their beliefs, to try to get other people to share them and even to try to convert those whom they are addressing.

The only limits on the exercise of this right are those dictated by respect for the rights of others where there is an attempt to coerce the person into consenting or to use manipulative techniques.

The other types of unacceptable behaviour - such as brainwashing, breaches of labour law, endangering of public health and incitement to immorality, which are found in the practices of certain pseudo-religious groups - must be punished in positive law as ordinary criminal offences. Proselytism cannot be forbidden under cover of punishing such activities.

Certainly proselytism must not be carried on by coercion or by unfair means that take advantage of minors or persons legally incapacitated under civil law, but such lapses can be alleviated by the ordinary civil and criminal law.

In the second place, even if the Court had not found a breach in respect of the statute, it could, in my opinion, have worded its decision differently by adding a few definitions so that the scope of the decision would be properly understood.

Commentators and the member States may regret that, on such a serious matter, on the eve of the United Nations World Year for Tolerance, and given the United Nations Declaration against religious intolerance, the Court has failed to make explicit its interpretation of proselytism in relation to freedom of religion under Article 9 (art. 9).

The reasoning could also have better reflected the fact that Article 9 (art. 9) applies also to non-religious philosophical beliefs and that the application of it must protect people from abuses by certain sects; but here it is for the States to legislate so that any deviation leading to attempts at brainwashing are regulated by the ordinary law. Non-criminal proselytism remains the main expression of freedom of religion. Attempting to make converts is not in itself an attack on the freedom and beliefs of others or an infringement of their rights.

The Government admitted that Law no. 1363/1938 had not been repealed after the adoption of the 1975 Constitution. They argued that several judgments of the Supreme Administrative Court had afforded religious freedom effective protection, but the fact remains that the courts can always apply the Law in the same way as it was applied in the Kokkinakis case. The Strasbourg institutions cannot, however, monitor compatibility with Article 9 (art. 9) on the basis of the degree of severity and the proportionality of the penalty.

Even without criticising the Greek courts' decision in itself, in respect of the content of the conversation and the verification of the evidence, one may note that in the decisions no dividing line is drawn, in terms of the law or the Constitution, between bearing witness, proclaiming one's faith or religious persuasion, and coercion. The two dissenting judges in the Greek courts drew attention to the thinness of the reasons given for the decisions.

In his memorial in reply in the proceedings before the Commission, the applicant made two significant points:

"1. The formal proclamation of freedom of conscience in religious matters and its manifestations dates from after the prohibition of 'proselytism' in the various Constitutions. It was introduced in the Constitution of 3 June 1927 (Article 1 para. 1 (c)) and is included today among the 'personal and social' fundamental rights listed and, as in the Universal Declaration and the European Convention, specifically described as 'human rights' (Constitution of 9 June 1975, Articles 13 para. 1, 25 and 28. There is therefore an anomaly, if not a flagrant contradiction, in the actual text of the Constitution. While the decrees of 1938-39 issued under the dictatorship

aggravated matters by making convictions and the purely verbal exercise of a religion a criminal offence - for which no provision has ever been made in criminal law (as already noted) -, there are cogent reasons for at last acknowledging that these provisions are incompatible with the letter and spirit of the Constitution in force: the exercise or harmless expression or even the suspicion of a sentiment which discloses a religious conviction - as in the Kokkinakis case - cannot amount to an offence! This is how the Constitution should have been applied by the legislature and the administrative and judicial authorities. And this, without any doubt, is above all how the European Convention must be obeyed, and applied by its own institutions.

2. The respondent Government point to certain judicial decisions which they claim show toleration of the existence and religious activities of believers other than those of the Orthodox Church and, in an isolated case which is ultimately of secondary importance, of an adherent of the religion professed by the applicant. It will be noted, firstly, that the existence of such judgments in itself demonstrates that there are intolerant administrative practices; secondly, that the cases in point and the solutions adopted under liberal-sounding recitals are not identified; and thirdly, that no decision has been cited which repudiates this parasitic criminal legislation that allows of sporadic but none the less virulent persecution of non-Orthodox Christians, since unfortunately no such decision has ever been given. All the decisions have recognised the validity and applicability of the 1938 decrees.

There is no question of embarking here on a discussion of the Constitutional merits of 'proselytism' in Greece as tendentiously defined in the emergency Laws of 1938/39, since the only issue arising before the European Convention institutions is whether the provisions of these enactments and the application made of them to the detriment of the applicant, until domestic remedies were exhausted, amount to breaches of the Convention for which the Greek Government are responsible."

The Greek Government relied on statements of principle supporting freedom of religion.

On this point the European Court's reasoning does not seem to me to provide sufficient criteria for assessing the relationship between legislation on proselytism and Article 9 (art. 9).

Spiritual, religious and philosophical convictions belong to the private sphere of beliefs and call into play the right to express and manifest them. Setting up a system of criminal prosecution and punishment without safeguards is a perilous undertaking, and the authoritarian regimes which, while proclaiming freedom of religion in their Constitutions, have restricted it by means of criminal offences of parasitism, subversion or proselytism have given rise to abuses with which we are all too familiar.

The wording adopted by the majority of the Court in finding a breach, namely that the applicant's conviction was not justified in the circumstances of the case, leaves too much room for a repressive interpretation by the Greek courts in the future, whereas public prosecution must likewise be monitored. In my view, it would have been possible to define impropriety, coercion and duress more clearly and to describe more satisfactorily, in the abstract, the full scope of religious freedom and bearing witness.

The forms of words used by the World Council of Churches, the Second Vatican Council, philosophers and sociologists when referring to coercion, abuse of one's own rights which infringes the rights of others and the manipulation of people by methods which lead to a violation of conscience, all make it possible to define any permissible limits of proselytism. They can provide the member States with positive material for giving effect to the Court's judgment in future and fully implementing the principle and standards of religious freedom under Article 9 (art. 9) of the European Convention.

CONCURRING OPINION OF JUDGE DE MEYER

(Translation)

Proselytism, defined as "zeal in spreading the faith"*, cannot be punishable as such: it is a way - perfectly legitimate in itself - of "manifesting [one's] religion".

In the instant case the applicant was convicted only for having shown such zeal, without any impropriety on his part**.

All that he could be accused of was that he had tried to get Mrs Kyriakaki to share his religious beliefs. Mrs Kyriakaki had let him into her house and there is nothing to show that she asked him at any point to leave; she preferred to listen to what he had to say*** while awaiting the arrival of the police, who had been alerted by her husband, the cantor****.

* Le Petit Robert, vol. 1, 1992 édition, p. 1552.

** Paragraph 49 of the judgment; paragraphs 71 and 73 of the Commission's report.

*** Paragraphs 9 and 10 of the judgment; paragraphs 22-25 of the Commission's report.

DISSENTING OPINION OF JUDGE VALTICOS

(Translation)

I regret that I cannot share the opinion of the majority of the Court and I regret just as much that they could not accept my view. My disagreement concerns both the scope of Article 9 (art. 9) and the assessment of the facts in this case.

As regards the scope of Article 9 (art. 9), I am unable to interpret the words "freedom, either alone or in community with others and in public or private, to manifest [one's] religion or belief, in worship, teaching, practice, and observance" as broadly as the majority do. As with all freedoms, everyone's freedom of religion must end where another person's begins. Freedom "either alone or in community with others and in public or private, to manifest [one's] religion", certainly means freedom to practise and manifest it, but not to attempt persistently to combat and alter the religion of others, to influence minds by active and often unreasonable propaganda. It is designed to ensure religious peace and tolerance, not to permit religious clashes and even wars, particularly at a time when many sects manage to entice simple, naïve souls by doubtful means. But even if the Chamber considers that such is not its purpose, that is, at all events, the direction in which its conception may lead.

At this stage a misunderstanding must be removed: it has been maintained that conversations during which a person merely sets out his religious beliefs cannot constitute an attack on the religion of others. In reality, the position in the instant case is quite different. In another case being heard by another Chamber (the Hoffmann case*) the Commission states in its report (paragraph 27) that the complainant, who is also a Jehovah's Witness, made visits once a week to spread her faith. In the case of this sect, therefore, what is involved is indeed a systematic attempt at conversion, and consequently an attack on the religious beliefs of others. That has nothing to do with Article 9 (art. 9), which is designed solely to protect the religion of individuals and not their right to attack that of others.

I may add that the term "teaching" in Article 9 (art. 9) undoubtedly refers to religious teaching in school curricula or in religious institutions, and not to personal door-to-door canvassing as in the present case.

This brings me to the present case.

There are three aspects to it: national law, the facts properly speaking and the court decisions.

First of all, the Law: is it precise or does it contain an element of ambiguity, of excessive generality, which might allow of arbitrariness in the

* Note by the Registrar: Hoffmann v. Austria judgment of 23 June 1993, Series A no. 255-C.

application of it as a criminal statute? In my view, there is no room for doubt. The Law deals with, as an offence, "proselytism", which is of course a Greek word and, like so many others, has passed into English and also into French, and which the Petit Robert dictionary defines as "zeal in spreading the faith, and by extension in making converts, winning adherents". This is a far cry from merely manifesting one's belief, as covered by Article 9 (art. 9). Someone who proselytises seeks to convert others; he does not confine himself to affirming his faith but seeks to change that of others to his own. And the Petit Robert clarifies its explanation by giving the following quotation from Paul Valéry: "I consider it unworthy to want others to be of one's own opinion. Proselytism astonishes me."

Whereas the term "proselytism" would, in my view, have sufficed to define the offence and to satisfy the principle that an offence must be defined in law, Greek criminal law, for the avoidance of any ambiguity, gives an illustration of it which, while intended as an explanation and an example (no doubt the commonest one), none the less constitutes a meaningful definition, and that is: "By 'proselytism' is meant, in particular, any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion, with the aim of undermining those beliefs, either by any kind of inducement or promise of an inducement or moral support or material assistance, or by fraudulent means or by taking advantage of his inexperience, trust, need, low intellect or naïvety."

This definition of, if one may so term it, rape of the beliefs of others cannot in any way be regarded as contrary to Article 9 (art. 9) of the Convention. On the contrary, it is such as to protect individuals' freedom of religious belief.

Let us look now at the facts of the case. On the one hand, we have a militant Jehovah's Witness, a hardbitten adept of proselytism, a specialist in conversion, a martyr of the criminal courts whose earlier convictions have served only to harden him in his militancy, and, on the other hand, the ideal victim, a naïve woman, the wife of a cantor in the Orthodox Church (if he manages to convert her, what a triumph!). He swoops on her, trumpets that he has good news for her (the play on words is obvious, but no doubt not to her), manages to get himself let in and, as an experienced commercial traveller and cunning purveyor of a faith he wants to spread, expounds to her his intellectual wares cunningly wrapped up in a mantle of universal peace and radiant happiness. Who, indeed, would not like peace and happiness? But is this the mere exposition of Mr Kokkinakis's beliefs or is it not rather an attempt to beguile the simple soul of the cantor's wife? Does the Convention afford its protection to such undertakings? Certainly not.

One further detail must be provided. The Greek Law does not in any way restrict the concept of proselytism to attempts at the intellectual corruption of Orthodox Christians but applies irrespective of the religion concerned. Admittedly, the Government's representative was not able to give concrete

examples concerning other religions, but that is not surprising since the Orthodox religion is the religion of nearly the whole population and sects are going to fish for followers in the best-stocked waters.

Probably in recent years there have been rather too many prosecutions and the police have been rather too active, but more recently there has been a substantial drop in the number of such prosecutions, and in the present case there was no official prosecution - it was the victim's husband who, on returning home and discovering what the home preacher was up to, raised his voice, which was a strong one, to call the police.

I should certainly be inclined to recommend the Government to give instructions that prosecutions should be avoided where harmless conversations are involved, but not in the case of systematic, persistent campaigns entailing actions bordering on unlawful entry.

That having been said, I do not consider in any way that there has been a breach of the Convention.

PS. Having read certain separate opinions annexed to the judgment, I must express my regret at a number of exaggerations which go so far as to make reference to totalitarian regimes.

I should also like to sound a note of caution with regard to the opinion that "attempting to make converts is not in itself an attack on the freedom and beliefs of others or an infringement of their rights". Certainly that is an expression of moderation and common sense and the Chamber (perhaps even the plenary Court should have dealt with it) very rightly warned against abuses where proselytism is concerned. But faith can sometimes be blind and attempts to spread it can be overzealous. Acts of faith have sometimes culminated in autos-da-fé and questioning on the subject has led to inquisitions, while the names of certain saints have remained associated with excesses committed on their feast days. In matters of faith as in so many other matters, respect for the human person must always be upheld.

At a time when sects enjoying varying degrees of recognition and, sometimes, even adherents of recognised religions resort, under the influence of fanaticism, to all kinds of tactics to obtain conversions, sometimes with tragic results, as has been seen again recently, it is regrettable that the above judgment should allow proselytising activities on condition only that they should not be "improper". Can a convention on human rights really authorise such an intrusion on people's beliefs, even where it is not a forceful one?

PARTLY DISSENTING OPINION OF JUDGE MARTENS

INTRODUCTION

1. I concur with the Court that there has been a breach of Article 9 (art. 9), but for reasons other than those relied on by the Court. I moreover differ from the Court in that I consider that there has been a breach of Article 7 (art. 7) as well.

2. I likewise agree with the Court that the Article 9 (art. 9) issue is by far the more important one, and I would have welcomed it if the Court had held - as, in my judgment, it could very well have done - that in view of its findings with respect to Article 9 (art. 9) it was not necessary to examine the applicant's complaints under Article 7 (art. 7).

I would have preferred the Court to have chosen that course, since that would have enabled me to follow suit; whereas now, being unable to agree with the Court's findings with respect to Article 7 (art. 7), I am bound to discuss whether that Article has been violated by the wording or the application of a criminal provision the very existence of which, in my opinion, violates Article 9 (art. 9).

However theoretical such an exercise may seem, it cannot be escaped. And since it may serve as an introduction to my discussion of the Article 9 (art. 9) issue, I will start with explaining my position with regard to Article 7 (art. 7).

3. Before doing so I would, however, point out that although both parties have - rightly - elevated the debate to the plane of important principle, it should not be forgotten that what occasioned this debate was a normal and perfectly inoffensive call by two elderly Jehovah's Witnesses (the applicant was 77 at the time) trying to sell some of the sect's booklets to a lady who, instead of closing the door, allowed the old couple entry, either because she was no match for their insistence or because she believed them to be bringing tidings from relatives on the mainland. There is no trace of violence or of anything that could properly be styled "coercion"; at the worst there was a trivial lie. If resort to criminal law was at all warranted, a prosecution for disturbance of domestic peace would seem the severest possible response.

HAS ARTICLE 7 (art. 7) BEEN VIOLATED?

4. In general I subscribe to what the Court says about Article 7 (art. 7) in the first part of paragraph 50 of its judgment, albeit that, unlike the Court, I think that the requirement that a legal definition of a crime be drafted as precisely as possible is not a consequence but part and parcel of the principle enshrined in Article 7 para. 1 (art. 7-1).

I am, furthermore, convinced that this requirement serves not only (as the Court suggests in the second part of paragraph 50) the aim of enabling the individual to know "what acts and omissions will make him liable", but is

intended - in accordance with its historical origin - also and primarily to secure the individual adequate protection against arbitrary prosecution and conviction: Article 7 para. 1 (art. 7-1) demands that criminal law should be compatible with the rule of law.

5. The more I have thought about it, the less I have remained satisfied that section 4 of Law no. 1363/1938 defines the offence of proselytism with the degree of precision required by Article 7 (art. 7) thus understood.

The first - and, as regards protection against arbitrariness, the most suspect - imprecision lies in the words "in particular": those words virtually permit prosecution for acts that fall outside the definition given. Secondly, the punishable act (as defined) is not "intrusion on the religious beliefs" (whatever that may be), but "any direct or indirect attempt" at such intrusion, which not only considerably broadens the definition but also greatly enhances its essential vagueness. A final point to note is the dangerous ambiguity of the requirement "with the aim of undermining those beliefs": is it at all possible to distinguish between proclaiming one's own faith to others and trying to convince those others that their tenets are "wrong"?

These deficiencies are such that, in an atmosphere of religious intolerance, section 4 of Law no. 1363/1938 provides a perfect and dangerous instrument for repressing heterodox minorities. The file suggests that in the past it has indeed been used for this purpose, whilst at present such use, to put it mildly, does not seem to be wholly excluded. This aspect is all the more serious as the present situation in the south-eastern part of Europe shows that the region is not at all immune to the rise of fierce religious intolerance which is sweeping over our modern world.

This is why I am not impressed by the argument that the above deficiencies of the text are "cured" by case-law, especially of the highest Greek courts. It may be, for instance, that since 1975 the Court of Cassation, reversing its former case-law, has eliminated the consequence of the words "in particular" and that the Supreme Administrative Court's definition at least endeavours to take into account the above distinction between proclaiming one's religion and trying to convince another of the shallowness of his own tenets. However, recent history has taught us that if the political or religious atmosphere in a country changes, the case-law of even the highest courts may change too. Such case-law cannot, therefore, supplement guarantees against arbitrariness which the text of the law does not provide.

6. As the Court points out, Article 7 para. 1 (art. 7-1) also enshrines the principle that criminal law should be restrictively interpreted. This principle fulfils the role of a secondary safeguard against arbitrariness. Accordingly, the broader and vaguer the text of the relevant provision, the more important this secondary safeguard. The more important also the supervision by the Convention institutions.

As the Commission has consistently stated, the Convention institutions are empowered under Article 7 para. 1 (art. 7-1) to verify whether, on the facts of the case, the national courts could reasonably have arrived at a conviction under the applicable rule of municipal law: the Convention bodies have to be satisfied that the conviction not only was based on a pre-existing (and sufficiently precisely worded) provision of criminal law but also was compatible with the principle of restrictive interpretation of criminal legislation. The greater the doubt of the Convention institutions as to whether the provision applied meets the requirement of precision, the stricter should be their supervision of its application.

7. In the present case the applicant complained of "what he claimed to be the wrongful application to him of section 4 of Law no. 1363/1938". One of the points in issue was whether the facts established against the applicant justified a conviction under that section (see paragraph 60 of the Commission's report). It is true that this issue was addressed mainly in the context of Article 9 (art. 9), but, the Court being master of the legal characterisation to be given to the facts before it, there is room for scrutinising whether or not the Greek courts did respect the principle of restrictive interpretation of criminal legislation.

8. Let me say at once that upon examination of (the translations of) the full texts of the judgments of the Greek courts submitted by the parties, I have come to the conclusion that this question must be answered in the negative.

Before developing the three grounds on which my conclusion is mainly based, I cannot help noting one telling, but in the present context immaterial, feature of the file: although both the applicant and his wife have consistently denied the version of the facts given by Mrs Kyriakaki, his conviction was primarily, and without more, based on that version and consequently rests for all practical purposes on the testimony of one sole witness.

9. The first ground referred to above concerns the following.

Section 4 of Law no. 1363/1938 requires an intention to convert the victim to the perpetrator's beliefs (as the word "proselytism" implies), or at least to undermine the victim's beliefs. The applicant, however, denied having had that intention. He pointed out that his intention was merely to "witness", that is to proclaim the gospel as understood by his sect. There is, of course, a fundamental and in the present context crucial difference between, on the one hand, acquainting someone with an opinion or a belief and, on the other hand, trying to convince him of its truth. The Greek courts simply ignored this difference, not even troubling to state on what evidence they based their opinion - which is necessarily implied in their finding the applicant guilty of "proselytism" - that he intended to convince Mrs Kyriakaki of the rightness of his beliefs and of the wrongness of hers.

The inevitable conclusion must therefore be that the applicant's conviction was based on the view that the mere proclaiming of religious beliefs differing from those of the person addressed implies intention to convert within the meaning of section 4. This is, however, clearly incompatible with the principle of restrictive interpretation of criminal legislation.

10. My second ground concerns a related point. The relevant judgments reveal that the Greek courts had no more than an extremely vague notion of what the applicant exactly had said to Mrs Kyriakaki.

From what both Mrs Kyriakaki and her eavesdropping husband testified before the magistrates at first instance it might be inferred that the applicant had somehow referred to the coming of the heavenly kingdom. On appeal, however, Mrs Kyriakaki could not remember whether this was mentioned and neither did her husband give any particulars about what he had overheard. The evidence included an equally vague reference to the paradise story and Mrs Kyriakaki's testimony that "they talked to me about Christ".

One is forced to question how the Greek courts were able to conclude, as they did, that the applicant (intentionally) attempted to make Mrs Kyriakaki change her beliefs without establishing - at the very least - what exactly he had said to her and that what he had told her was incompatible with what she believed.

Here again I find that in juxtaposing the facts with the text of section 4 one cannot but conclude that the applicant's conviction is incompatible with the principle of restrictive interpretation of criminal legislation.

11. My third and final ground corresponds to the criticism expressed by the anonymous dissenters in the Greek courts: the sole evidence for the applicant's (intentionally) taking advantage of Mrs Kyriakaki's "inexperience, her low intellect and her naïvety" (as the Crete Court of Appeal put it) was her testimony that she did not fully understand everything that the applicant read to her and told her. On appeal she even said in so many words: "They talked to me about things I did not understand very well."

This sufficed for the Greek courts to hold that the applicant had (intentionally) "abused" Mrs Kyriakaki's "inexperience in doctrine" and "exploited" "her spiritual naïvety" (as the Court of Cassation put it). That can only mean that the applicant's conviction was based on the view that the mere proclaiming of one's faith to a heterodox person whose experience in religious matters or whose mental capacities are less than those of the proclaimer makes the latter guilty under section 4. Again one is forced to conclude that the manner in which the Greek courts applied section 4 was incompatible with the principle of restrictive interpretation of criminal legislation.

12. My conclusion is that section 4 of Law no. 1363/1938 is per se incompatible with Article 7 para. 1 (art. 7-1) of the Convention and that its

application in the present case has given rise to a further violation of that Article.

HAS ARTICLE 9 (art. 9) BEEN VIOLATED?

13. The Court's judgment touches only incidentally on the question which, in my opinion, is the crucial one in this case: does Article 9 (art. 9) allow member States to make it a criminal offence to attempt to induce somebody to change his religion? From what it said in paragraphs 40-42 and 46 it is clear that the Court answers this question in the affirmative. My answer is in the negative.

14. The basic principle in human rights is respect for human dignity and human freedom. Essential for that dignity and that freedom are the freedoms of thought, conscience and religion enshrined in Article 9 para. 1 (art. 9-1). Accordingly, they are absolute. The Convention leaves no room whatsoever for interference by the State.

These absolute freedoms explicitly include freedom to change one's religion and beliefs. Whether or not somebody intends to change religion is no concern of the State's and, consequently, neither in principle should it be the State's concern if somebody attempts to induce another to change his religion.

15. There were good reasons for laying down in Article 9 (art. 9) that freedom of religion includes freedom to teach one's religion: many religious faiths count teaching the faith amongst the principal duties of believers. Admittedly, such teaching may gradually shade off into proselytising. It is true, furthermore, that proselytising creates a possible "conflict" between two subjects of the right to freedom of religion: it sets the rights of those whose religious faith encourages or requires such activity against the rights of those targeted to maintain their beliefs.

In principle, however, it is not within the province of the State to interfere in this "conflict" between proselytiser and proselytised. Firstly, because - since respect for human dignity and human freedom implies that the State is bound to accept that in principle everybody is capable of determining his fate in the way that he deems best - there is no justification for the State to use its power "to protect" the proselytised (it may be otherwise in very special situations in which the State has a particular duty of care, but such situations fall outside the present issue). Secondly, because even the "public order" argument cannot justify use of coercive State power in a field where tolerance demands that "free argument and debate" should be decisive. And thirdly, because under the Convention all religions and beliefs should, as far as the State is concerned, be equal.

That is also true in a State where, as in the present case, one particular religion has a dominant position: as the drafting history of Article 9 (art. 9) confirms (see, for example, *La Convention européenne des Droits de l'Homme*, by J. Velu and R. Ergec, Bruylant, 1990, p. 581, para. 708), the

fact of one religion having a special position under national law is immaterial to the State's obligation under that Article.

To allow States to interfere in the "conflict" implied in proselytising by making proselytising a criminal offence would not only run counter to the strict neutrality which the State is required to maintain in this field but also create the danger of discrimination when there is one dominant religion. The latter point is tellingly illustrated by the file that was before the Court.

16. In this context the Court suggests that some forms of proselytism are "proper" while others are "improper" and therefore may be criminalised (paragraph 48).

Admittedly, the freedom to proselytise may be abused, but the crucial question is whether that justifies enacting a criminal-law provision generally making punishable what the State considers improper proselytism. There are at least two reasons for answering that question in the negative. The first is that the State, being bound to strict neutrality in religious matters, lacks the necessary touchstone and therefore should not set itself up as the arbiter for assessing whether particular religious behaviour is "proper" or "improper". The absence of such a touchstone cannot be made good (as the Court attempts to do) by resorting to the quasi-neutral test whether or not the proselytism in question is "compatible with respect for the freedom of thought, conscience and religion of others". This is because that very absence implies that the State is lacking intrinsic justification for attributing greater value to the freedom not to be proselytised than to the right to proselytise and, consequently, for introducing a criminal-law provision protecting the former at the cost of the latter. The second reason is that the rising tide of religious intolerance makes it imperative to keep the State's powers in this field within the strictest possible boundaries. However, the Court achieves quite the reverse in attempting to settle those boundaries by means of so elusive a notion as "improper proselytism", a definition of which the Court does not even attempt to give.

17. Should the judgment be otherwise where proselytism is combined with "coercion"? I do not think so.

Coercion in the present context does not refer to conversion by coercion, for people who truly believe do not change their beliefs as a result of coercion; what we are really contemplating is coercion in order to make somebody join a denomination and its counterpart, coercion to prevent somebody from leaving a denomination. Even in such a case of "coercion for religious purposes" it is in principle for those concerned to help themselves. Accordingly, if there is to be a legal remedy, it should be a civil-law remedy. The strict neutrality which the State is bound to observe in religious matters excludes interference in this conflict by means of criminal law. Unless, of course, the coercion, apart from its purpose, constitutes an ordinary crime, such as physical assault. In such cases the State may, of course, prosecute under the applicable provision of (ordinary)

criminal law and a defence based on freedom to proselytise may properly be rejected if that freedom is clearly abused. There is, however, no justification for making coercion in religious matters a criminal offence per se.

18. Is there no such justification even for making proselytism practised by means of serious forms of spiritual coercion a criminal offence? Cannot such justification be found in the methods of conversion used by some of the numerous new sects which have emerged these last decades, methods which are often said to be akin to brainwashing? Should not the State be entitled to protect its citizens - and especially its minors - against such methods?

Even if the use of such objectionable methods of proselytising had been established, I would have hesitated to answer this question in the affirmative, since it is evidently difficult to establish where spiritual means of conversion cross the borderline between insistent and intensive teaching, which should be allowed, and spiritual coercion akin to brainwashing. I am not satisfied, however, that the existence of such offensive methods has been established. In 1984 the author of a study on these new sects, made at the request of the Netherlands Parliament, concluded after extensive research that, as far as the Netherlands were concerned, there was no such evidence. The author stressed that everywhere the new sects had provoked violent reactions including persistent allegations about such methods, but that Governments had up till then declined to take measures.

I would add that there probably are methods of spiritual coercion akin to brainwashing which arguably fall within the ambit of Article 3 (art. 3) of the Convention and should therefore be prohibited by making their use an offence under ordinary criminal law. But in this context also I would stress that there is no justification for making a special provision in the law for cases where such methods are used for the purpose of proselytising.

19. To summarise: even if the Government's thesis that section 4 of Law no. 1363/1938 is intended to prevent conversions being made by coercion were compatible with the wording of that provision (which it is not), that justification would fail.

20. For these reasons I find that Greece, which, as far as I have been able to ascertain, is the only member State to have made proselytism a criminal offence per se, in so doing has violated Article 9 (art. 9) of the Convention.

JOINT DISSENTING OPINION OF JUDGES FOIGHÉL AND
LOIZOU

We regret that we are unable to agree with the opinion of the majority of the Court as we take a different approach to the issues raised in this case. Article 9 para. 1 (art. 9-1) guarantees to everyone the right to freedom of thought, conscience and religion; this right includes freedom to change one's religion or belief and freedom, either alone or in community with others and in public or private, to manifest one's religion or belief, in worship, teaching, practice and observance. We are concerned here with the freedom one has to teach one's own religion.

The relevant Greek law making proselytism a criminal offence reads as follows:

"By 'proselytism' is meant, in particular, any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion, with the aim of undermining those beliefs, either by any kind of inducement or promise of an inducement or moral support or material assistance, or by fraudulent means or by taking advantage of his inexperience, trust, need, low intellect or naïvety."

This definition of the offence of "proselytism" cannot, in our view, be considered to constitute a violation of Article 9 para. 1 (art. 9-1). It is only when it takes this kind of intrusive form as opposed to genuine, open and straightforward teaching of a religion that it is a criminal offence.

The term "teach" entails openness and uprightness and the avoidance of the use of devious or improper means or false pretexts as in this case in order to gain access to a person's home and, once there, by abusing the courtesy and hospitality extended, take advantage of the ignorance or inexperience in theological doctrine of someone who has no specialist training and try to get that person to change his or her religion.

This is all the more so as the term "teach" has to be read in the context of the whole Article (art. 9) and in conjunction with the limitations prescribed by paragraph 2 (art. 9-2), in particular that of the protection of the rights and freedoms of others, which no doubt includes a duty imposed on those who are engaged in teaching their religion to respect that of others. Religious tolerance implies respect for the religious beliefs of others.

One cannot be deemed to show respect for the rights and freedoms of others if one employs means that are intended to entrap someone and dominate his mind in order to convert him. This is impermissible in the civilised societies of the Contracting States. The persistent efforts of some fanatics to convert others to their own beliefs by using unacceptable psychological techniques on people, which amount in effect to coercion, cannot in our view come within the ambit of the natural meaning of the term "teach" to be found in paragraph 1 of this Article (art. 9-1).

For the above reasons we find in the circumstances of this case that there has been no breach of Article 9 (art. 9).