

**APPLICATION N° 25759/94**

**Sadık AHMET SADIK v/GREECE**

**DECISION of 6 March 1997 on the admissibility of the application**

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**Article 26 of the Convention** *To exhaust domestic remedies the person concerned must have raised before the national authorities, at least in substance the complaint he puts before the Commission. This is not the case when the applicant has not at any time invoked a specific provision of the Convention or any equivalent or similar arguments based on domestic law*

**Article 29 of the Convention** *Application previously declared admissible. Decision, by the majority required under Article 29 to reject it for non-exhaustion of domestic remedies following a judgment of the European Court of Human Rights delivered in the meantime in the applicant's first case: the same reasoning applying in this case*

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**THE FACTS**

The applicant a Greek national, born in 1947, was a surgeon and a former Member of Parliament for the Muslim minority in Western Thrace. He used to live in Komotini. He died on 24 July 1995 in a car accident in Greece.

Before the Commission, the applicant was represented by Mr Tekin Akıllıoğlu, a member of the Ankara Bar. In a letter of 24 August 1995, Mr Akıllıoğlu informed the Commission that the deceased's heirs, namely his wife and two minor children, wanted to continue the proceedings before the Commission.

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

1 *Particular circumstances of the case*

Between 1 September 1985 and 9 August 1986, the applicant travelled around Western Thrace, talking to Muslims in the area and telling them that the Governments of Greece were disregarding and violating human rights, systematically exterminating Muslims in Western Thrace and undermining their historical hypostasis, their religion, their mother tongue and their Turkish origin, contrary to the Treaty of Lausanne. The applicant also invited his fellow Muslims to sign a petition he was carrying with him entitled Complaints and demands of the Turco Muslim minority of Western Thrace which read as follows

As inhabitants of Western Thrace and Greek citizens, we are complaining about the injustices committed by the leaders of Greece against the Turco Muslim minorities, because the various Greek Governments have disregarded human rights. In particular, despite the international human rights guarantees, they are systematically annihilating the inhabitants of the mountain areas and of the plains and the towns. What is more, over the past twenty years, we have repeatedly requested that the injustices against us cease but all the reports we have submitted to the competent authorities have received a negative response and no one has admitted the injustices which are being committed against us. For these reasons, we have decided to bring our case before the United Nations Organisation (UNO). We set out our main demands under the following six articles

*First Article*

Despite our historical existence, our religion, our Turkish mother tongue and our Turkish origins, the competent authorities do not accept us as Turks. They inform us in writing and orally that we are not Turkish. As an example, we refer to the letter we received from Mr Alevras, the President of the Parliament. The Teachers Association for our two associations was active for sixty years but the word Turkish was deleted from the plaques which were subsequently banned. We want our religion and our nationality to be accepted and the authorities to cease challenging this fundamental right and to honour and respect it.

*Second Article*

The State has deliberately destroyed our education by the following means

a It has suspended the appointment to our schools of teachers whom we have educated with religious ideals. The teachers attend special teachers' training colleges and, despite opposition by our minority group, those with Greek convictions continue to be hired and ultimately, the schools close and some children are left idle.

b The Government are setting up Greek high schools (lower secondary schools) in Turco-Muslim areas and they want our children to attend those schools. Primary school children have to take exams in order to gain entrance to secondary school and only a small number of children succeed. Their counterparts in Greek schools are admitted (to secondary school) without having to take an exam. In this way the Government are excluding our children.

c Although the population is over 100,000, the secondary school establishments are limited to two lower secondary schools and two upper secondary schools. At the end of the year, pupils who have attended the classes taught in Turkish throughout the school year are examined in Greek by a board composed of State appointed Greeks. This paradoxical system has paralysed the two upper secondary schools. The result is that the schools close and our children are obliged to attend another school, whereupon their number diminishes. According to the principle of human rights, the choice of a child's education belongs to his or her mother and father (Article 26/3) and despite that we are excluded. We demand, with the examples we have given, that this injustice against us cease.

### *Third Article*

These are the methods implemented to destroy our economic situation.

a In our region, authorisation has to be obtained for the sale and purchase of land. Such authorisation is granted only to Christians. Sometimes the Government will exceptionally turn a blind eye, but there is a practice of denying Muslim Turks authorisation. Article 17 of the Greek Constitution provides that the right of property shall be protected by the State. This right cannot be denied to anyone, but we ourselves find ourselves outlawed.

b In our region, our properties alone are singled out for demolition.

c Our relatives' property is administered according to public inheritance rules, on the basis that they have no title to their property, we are thus stripped of our inheritance

d Persons carrying on an independent profession and even religious preparatory school teachers are taxed to the order of between 5,000,000 and 10,000,000 Greek drachmas (GRD) in the full knowledge that they cannot pay these sums

e Not one of us, despite the fact that he is not a State employee, and not one pharmacist, is ever granted authorisation to practise his profession, despite having all the necessary legal qualifications

f Only a limited number of driving licenses are granted (for any category of vehicle)

#### *Fourth Article*

In twenty years we have not been granted a building permit Neither are we allowed to repair old houses The result is that in the areas inhabited by Christian Greeks, there are buildings several storeys high and luxurious houses, whereas in the areas inhabited by Muslim Turks the buildings are in the same condition as in underdeveloped countries There are two classes of citizens in Greece, this is clear from the above example

#### *Fifth Article*

Article 5 of the Greek Constitution provides "Everyone shall have religious, linguistic and political freedom Honour and respect for those freedoms shall be guaranteed by the State" The Constitution prohibits any interference with travel outside Greece and entry or exit into and from the country (paragraph 4) If we compare these rights to those of our Muslim Turkish compatriots on this point

a Despite the Constitution, the nationality of our long standing fellow citizens is withdrawn on the pretext that they no longer live here, when they want to come back to Greece they are not allowed to cross the border In accordance with human rights (Art 15), no one can be stripped of his nationality without reason Those who have remained outside the country on grounds of their religious convictions or patriotic sentiments have sacrificed themselves and have lost their nationality

b Those of our fellow citizens who have lived abroad for more than six months have the length of validity of their five-year passports reduced and are issued with a passport valid only for one journey

c They separate our minority group and attempt to dissolve our community. The civil servants to whom this task is assigned travel around the villages and towns, contacting the destitute and the unemployed. They promise them a good life, a luxurious existence and separate them from us. They direct them to Northern Greece and find them jobs on condition that they move their homes and families to their place of work. They oblige our children to attend Christian schools and even want them to change their names. Those who have not accepted these conditions have been dismissed, despite having worked for years in the coal mines.

#### *Sixth Article*

a Under the Greek legislation, our most senior religious leaders are elected by regional boards (Law No. 2345/1920). Despite that, when the Mufti of Komotini died on 2 June 1985, the Government appointed his successor without soliciting the opinion of the Muslims and ultimately, he resigned. Six months later, a further election was held on 16 December 1985 but once again without the consent of our people. For a year now we have been asking for a solution to this intractable problem, i.e. that the choice be made by our minority.

b In our towns, the boards were set up in accordance with Law No. 2345/1920. In 1967, the military junta replaced the members of those boards and in 1974, other members were appointed. However, the former members have remained in office until now and we have not been given the right to re-elect candidates.

We, the inhabitants of Western Thrace, whose fundamental rights are being trampled on by the injustices being perpetrated in this undemocratic fashion, address our complaint to the United Nations Organisation (UNO) and request its assistance in securing recognition of our rights, by condemning our oppression to the Democratic States.

On 24 June 1988, Salonika Criminal Court, in an 87-page decision and after hearing evidence from a number of witnesses, sentenced the applicant to a two and a half year suspended prison sentence and to a fine of GRD 100,000 for disseminating false information (διασπορά ψευδών ειδήσεων) and forging private documents (πλαστογραφία).

The applicant appealed.

The applicant was elected to the Greek Parliament in the general election of 8 April 1990

On 30 June 1990 the public prosecutor attached to Salonika Court of Appeal (Εισαγγελέας Εφετών) requested authorisation from Parliament, in accordance with Article 62 of the Greek Constitution, for the applicant's appeal to be heard

As the prosecutor's request was dismissed on 31 October 1990, a decision was not given in the appeal proceedings until after 18 October 1993 the date on which the applicant's term in office ended

On 1 February 1994 Salonika Court of Appeal dismissed the applicant's appeal but reduced his prison sentence to sixteen months, commutable into a fine

In particular, the court after hearing evidence from a number of witnesses refuted the applicant's allegations point by point and concluded that it had been proved that every single one of his allegations was false. The court held that the spreading of such allegations was calculated to arouse fear among the citizens and perturb the country's international relations. The court then found that the applicant had forged various signatures to the petition he carried with him

On 4 April 1994 the applicant appealed on points of law (αναίρεση)

On 21 June 1994 the Court of Cassation (Αρειος Πάγος) dismissed the applicant's appeal on the ground that it was ill founded

2 *Relevant domestic law*

a Article 14 of the Greek Constitution of 1975 provides that

1 Every person may express and propagate his thoughts orally, in writing and through the press in compliance with the laws of the State

b Article 62 of the Constitution provides that

Throughout the term of a Parliament, no Member of Parliament may be prosecuted, arrested, detained or deprived in any other way of his personal freedom without the prior authorisation of Parliament

c Under section 191 of the Greek Criminal Code the spreading of false information calculated to arouse fear among the citizens or to undermine confidence in the State is punishable by not less than three months' imprisonment and a fine

- d Under section 216 (1) of the Greek Criminal Code, anyone who forges a document with a view to deceiving another shall be punished by not less than three months' imprisonment

## **COMPLAINTS**

1 The applicant complained that his conviction constituted unjustified interference with his right to freedom of expression, contrary to Article 10 of the Convention

2 The applicant also invoked Article 14 of the Convention, complaining that he had been the victim of discrimination in the exercise of his right to freedom of expression

## **PROCEEDINGS BEFORE THE COMMISSION**

The application was introduced on 21 November 1994 and registered on 22 November 1994

On 15 May 1995 the Commission decided, pursuant to Article 48 para 2 (b) of its Rules of Procedure, to give notice of the application to the respondent Government and to invite them to submit written observations on its admissibility and merits

The Government submitted their observations on 9 October 1995, after an extension of the time limit fixed for this purpose, and the applicant's lawyer replied on 3 December 1995

On 26 February 1996 the Commission declared the application admissible

On 18 January 1997 the Commission decided to invite the parties to submit further written observations on the application in the light of the judgment of the European Court of Human Rights dated 15 November 1996 concerning Application No 18877/91, Ahmet Sadik v Greece

The Government submitted their further observations on 27 January 1997 and the applicant's lawyer submitted his on 3 February 1997

## **THE LAW**

The applicant complains that his conviction constituted an unjustified interference with his right to freedom of expression and invokes Article 10 of the Convention taken both alone and in conjunction with Article 14 of the Convention

The Commission recalls that the applicant had previously introduced another application (No 18877/91) which also raised issues regarding the right to freedom of expression. It concerned in particular his conviction for having disturbed public peace during an election campaign by using the word Turkish to define Greek citizens belonging to the Muslim minority of Western Thrace. That conviction was pursuant to section 192 of the Greek Criminal Code

During the examination of the admissibility of that application, the Government had argued that the applicant had failed to exhaust domestic remedies, as he had not raised before the national courts, even in substance, the complaint of a violation of Article 10

In its decision on admissibility of 8 July 1994 the Commission had dismissed the objection raised by the Government on the ground that, in basing his defence on section 192 of the Criminal Code, the applicant had raised in substance before the Court of Cassation a complaint relating to a breach of Article 10

However, the European Court of Human Rights, in a judgment delivered on 15 November 1996, held that the applicant had not validly exhausted domestic remedies. In particular, the Court considered that the applicant had not at any time complained before the courts either of a breach of Article 10 of the Convention or raised arguments to the same or like effect based on domestic law, but had merely defended himself against the charge of disturbing the peace, contrary to section 192 of the Criminal Code (para 33). The Court therefore considered that domestic remedies had not been exhausted in that case (para 34).

Following that judgment of the European Court, the Government, which, in their observations of 9 October 1995 on the admissibility and merits of the instant case, had objected that the applicant had failed to exhaust domestic remedies on the ground that he had not raised before the national courts the complaint relating to infringement of his right to freedom of expression reiterate their submission that this application should be rejected for failure to exhaust domestic remedies.

The applicant's lawyer replies, in his further observations of 3 February 1997 that the applicant had invoked on many occasions the various provisions of the Greek Constitution and those of the Convention. He accepts however that the reference to the Convention was not made before the Court of Cassation but considers that he cannot be deemed not to have validly exhausted domestic remedies as a result of this omission. The applicant's lawyer submits, in any event, that even supposing that [the applicant] had not invoked in substance before the national courts his right to freedom of expression, the court had a duty to determine of its own motion where the dividing line between the right to express one's ethnic origin and the offence of incitement to disturb public order should be drawn.

The Commission recalls its decision of 26 February 1996 to declare the present application admissible. It also recalls Article 29 of the Convention which reads as follows:

After it has accepted a petition submitted under Article 25 the Commission may nevertheless decide by a majority of two thirds of its members to reject the petition if, in the course of its examination it finds that the existence of one of the grounds for non acceptance provided for in Article 27 has been established. In such a case the decision shall be communicated to the parties.

The Commission recalls that, in its decision on admissibility of 26 February 1996, it rejected the Government's objection that domestic remedies had not been exhausted. Although the applicant did not expressly rely on Article 14 of the Greek Constitution and Articles 19 and 14 of the Convention, the Commission held that, in basing his defence on section 191 of the Greek Criminal Code, the applicant had, "at least in substance", asserted before the domestic courts his right to freedom of expression.

However, in the light of the Court's conclusions in the first case brought by the applicant, the Commission finds that this application must also be rejected on the ground that the applicant did not validly exhaust domestic remedies within the meaning of Article 26 of the Convention

The application must therefore be rejected, pursuant to Article 29 of the Convention, the Commission having found that the existence of one of the grounds for non acceptance has been established

For these reasons, the Commission, by the majority required under Article 29 of the Convention,

**REJECTS THE APPLICATION**