CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 32186/02
by Mehmet AGGA
against Greece

The European Court of Human Rights (First Section), sitting on 5 April 2005 as a Chamber composed of:

Mr L. LOUCAIDES, *President*,
Mr C.L. ROZAKIS,
Mrs F. TULKENS,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 6 August 2002,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Mehmet Agga, is a Greek national, who was born in 1932 and lives in Xanthi (northern Greece). He is represented before the Court by Mr. S. Emin, a lawyer practising in Xanthi and Komotini. The respondent Government are represented by Mr V. Kyriazopoulos, Adviser at the State Legal Council and Mrs M. Papida, Legal Assistant at the State Legal Council.

A. The circumstances of the case

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

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

Fourth sets of criminal proceedings were instituted against the applicant under Article 175 of the Criminal Code for having usurped the functions of a minister of a "known religion" on the ground that on 11 February 1996 and 17 February 1996 he had issued messages in the capacity of the Mufti of Xanthi.

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

On 11 December 1997 the single-member first instance criminal court (*monomeles plimmeliodikio*) of Lamia found him guilty in the three first sets of proceedings (decisions nos. 3913/1997, 3914/1997, 3915/1997). On 1 December 1999 the single-member first instance criminal court (*monomeles plimmeliodikio*) of Lamia found the applicant guilty in the fourth set of proceedings (decision no. 4919/1999). The applicant appealed.

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

On 8 March 2002 the Court of Cassation rejected the applicants' appeals concerning the four sets of proceedings. It considered that the offence in Article 175 of the Criminal Code was committed "when somebody appeared as a minister of a known religion and when he discharged the functions of the minister's office including any of the administrative functions pertaining thereto". The court considered that the applicant had committed this offence

because he behaved and appeared as the Mufti of Xanthi. It further considered that the applicant's conviction was not contrary to Articles 9 and 10 of the Convention, because the applicant had not been punished for his religious beliefs or for expressing certain views but for usurping the functions of a Mufti. As regards Article 6 of the Convention, the Court of Cassation considered that the applicant was legally represented by lawyers of his own choice throughout the proceedings and that he had exercised all his defence rights (judgment no. 304/2002).

B. Relevant domestic law and practice

1. International treaties

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

(original)

> « La vie, les biens, l'honneur, la religion et les coutumes de ceux des habitants des localités cédées à la Grèce qui resteront sous l'administration hellénique seront scrupuleusement respectés.
>
> Ils jouiront entièrement des mêmes droits civils et politiques que les sujets hellènes d'origine. La liberté, la pratique extérieure du culte seront assurées aux Musulmans (...)
>
> Aucune atteinte ne pourra être portée à l'autonomie et à l'organisation hiérarchique des communautés musulmanes existantes ou qui pourraient se former, ni à l'administration des fonds et immeubles qui leur appartiennent (...)
>
> Les Muftis, chacun dans sa circonscription, seront élus par les électeurs musulmans (...)
>
> Les Muftis, outre leur compétence sur les affaires purement religieuses et leur surveillance sur l'administration des biens *vacoufs*, exerceront leur juridiction entre musulmans en matière de mariage, divorce, pensions alimentaires (*néfaca*), tutelle, curatelle, émancipation de mineurs, testaments islamiques et successions au poste de *mutévelli* (*Tévliét*).
>
> Les jugements rendus par les Muftis seront mis à exécution par les autorités helléniques compétentes.
>
> Quant aux successions, les parties Musulmanes intéressées pourront, après accord préalable, avoir recours au mufti, en qualité d'arbitre. Contre le jugement arbitral ainsi rendu toutes les voies de recours devant les tribunaux du pays seront admises, à moins d'une clause contraire expressément stipulée. »

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

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

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

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

2. The legislation on the Muftis

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

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

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

3. Legislative acts under Article 44 § 1 of the Constitution

Article 44 § 1 of the Constitution provides as follows:

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

4. Relevant provisions of the Criminal Code

Article 175 of the Criminal Code provides as follows:

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

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

Article 176 of the Criminal Code provides as follows:

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

5. The legislation on ministers of "known religions"

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

COMPLAINTS

1. The applicant complains under Article 6 of the Convention of the fairness of the proceedings.

2. The applicant also complains that his conviction amounted to a violation of his rights guaranteed by Articles 9 and 10 of the Convention.

THE LAW

1. The applicant complains under Article 6 of the Convention that his convictions were unfair. He submits in this connection that it had not been shown that he had discharged any of the functions of a mufti and that the reasoning of the domestic courts was vague and contradictory. He also complains that he was tried in Lamia, far away from Xanthi. As a result, he could not have easy access to the case-file and had been obliged to lodge his appeal in cassation without reading the appellate courts' decisions.

Article 6 § 1 of the Convention provides as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing".

The Court recalls that according to Article 19 of the Convention it is not its function to deal with errors of fact or law allegedly committed by a national court unless and insofar as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (*Garcia Ruiz v. Spain* [GC], no. 30544/96, ECHR 1999–I, p. 98, § 28).

The Court notes that the applicant was assisted by lawyers of his own choice before the domestic courts involved. He was able to put his arguments and challenge those of the prosecution at every stage of the proceedings. Moreover, he had the opportunity to examine the prosecution witnesses that appeared before the courts and to call witnesses in his defence. Finally, as regards the applicant's complaint that he was tried in Lamia than Xanthi, the Court notes that the applicant did not show that this fact caused real difficulties to his defence team. There is no evidence to suggest that the applicant was prevented from applying to the Court of Cassation and arguing his case effectively before it.

In the light of all the above, the Court considers that there is no appearance of a violation of Article 6 § 1 of the Convention. It follows that

this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant complains under Articles 9 and 10 of the Convention of his conviction for usurping the functions of a minister of known religion. He also complains that he was convicted for certain statements of religious content he had made.

Article 9 of the Convention provides as follows:

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

Article 10 of the Convention reads as follows:

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

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

In any event, even if there had been interference, the Government argue that it would have been justified under the second paragraph of Article 9. Firstly, according to the Government, the Treaty of Peace of Athens was not in force and the applicant's complaints should be examined under Articles 175 and 176 of the Criminal Code that were applicable in the present case. In this view, the Government contend that the interference was provided by law, Articles 175 and 176 of the Criminal Code. These provisions have been

interpreted by the courts in a manner which rendered his conviction foreseeable. The interference served a legitimate purpose. By protecting the authority of the lawful Mufti the domestic courts sought to preserve order in the particular religious community and in society at large. They also sought to protect the international relations of the country, an area over which States exercise unlimited discretion.

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

The applicant disagrees with the Government's arguments. He considers that the Treaty of Peace of Athens remains in force. Moreover, the applicant points out that the Moslems living in Thrace had never accepted the abrogation of Law no. 2345/1920. Finally, he argues that the Christians in Greece have the right to elect their religious leaders. Depriving the Moslems of this possibility amounts to discriminatory treatment.

In the light of the parties' observations, the Court considers that this part of the application raises serious questions of fact and law which are of such complexity that their determination should depend on an examination on the merits. It cannot, therefore, be considered manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints concerning freedom of thought and religion and freedom of expression;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Loukis LOUKAIDES
President