CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

DECISION

AS TO THE ADMISSIBILITY OF

Application No. 37439/97
by Mehmet AGGA
against Greece

The European Court of Human Rights (Second Section) sitting on 24 November 1998 as a Chamber composed of

Mr M. Fischbach, *President*,
Mr C. Rozakis
Mr G. Bonello,
Mrs V. Strážnická,
Mr P. Lorenzen,
Mr A. Baka,
Mr E. Levits, *Judges*,

with Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 5 August 1997 by Mehmet Agga against Greece and registered on 22 November 1997 under file No. 37439/97;

Having regard to:

- the reports provided for in Rule 49 of the Rules of Court;

- the observations submitted by the respondent Government on 27 February 1998 and the observations in reply submitted by the applicant on 27 April 1998;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Greek citizen, born in 1932. He resides in Xanthi, Greece. In the proceedings he is represented by Mr S. Emin, a lawyer practising in Komotini and Mr T. Akillioglu, a lawyer practising in Ankara.

The facts of the case, as they have been submitted by the parties, may be summarised as follows:

The applicant, who considers himself a member of the Turkish-Muslim minority of Thrace, was a candidate in the parliamentary elections of 18 June 1989. He had formed together with others the independent list "Destiny" (*Pepromeno - Ikbal*).

On 9 June 1989 at 14:30 Mr TOB complained to the police that at around 12:00 of the same day the applicant had promised him 2,000,000 drachmas in exchange for his support in the elections. TOB told the police that he had already denounced the applicant's behaviour on a radio programme.

On 13 June 1989 the public prosecutor of Xanthi instituted criminal proceedings against the applicant for attempting to bribe a voter. On 26 July 1989 the prosecutor summoned the applicant to appear before the three-member first instance criminal court (*trimeles plimmeliodikio*) of Xanthi on 12 September 1989 to be tried on the above-mentioned charge.

On 12 September 1989 the applicant was ill and the hearing was adjourned until 21 November 1989. On that date the hearing was adjourned until 9 January 1990 because the clerk of the court, following the instructions of his trade union, refused to work overtime. On 9 January 1990 three prosecution witnesses failed to appear. They were fined and the hearing was adjourned until 20 February 1990. On that date the applicant asked for an adjournment because he was ill. The hearing was adjourned until 19 June 1990. On 19 June 1990 TOB failed to appear. He was fined and the hearing was adjourned until 18 September 1990. On 18 September 1990 a further adjournment was ordered until 5 March 1991 because of the “work to rule” policy of the clerks of the court.

The applicant was tried on 5 March 1991. He was found guilty and received a suspended sentence of four months' imprisonment. The applicant and the public prosecutor appealed. The case-file was transferred to the public prosecutor of the Court of Appeal of Thrace on 19 March 1991 who fixed a hearing for both appeals for 9 January 1995.

However, on that date the three-member court of appeal (*trimeles efetio*) of Thrace had to adjourn the hearing until 6 December 1995 because of the “work to rule” industrial action of the clerks of the court. On 6 December 1995 the prosecution witnesses did not appear. They were fined and the hearing was adjourned until 4 March 1996.

The appeals were finally heard on 4 March 1996. The court heard TOB, who essentially repeated what he had told the police on 9 June 1989, and two other prosecution witnesses who had heard TOB denouncing the applicant on the radio. The

court also heard the applicant and a defence witness who both claimed that TOB had repeatedly asked the applicant for funds which would have covered the travel expenses of a number of persons who lived in Thessaloniki but voted in Xanthi and wanted to be taken there on the day of the elections. In a decision delivered on the same day the court of appeal upheld the applicant's conviction and sentence.

On 4 November 1996 the applicant appealed to the Court of Cassation on the ground that the court of appeal had not assessed the evidence correctly, had misapplied the law concerning bribery of voters and had not reasoned its decision adequately. The applicant also complained of a violation of Article 6 of the Convention because the court of appeal had not examined the evidence in a fair manner and had seriously delayed the proceedings.

On 18 February 1997 the Court of Cassation rejected the applicant's appeal. It considered that it was not competent to examine whether the evidence had been assessed correctly or not by the lower court. It also found that the law punishing bribery of voters had not been misapplied and that the decision was adequately reasoned. Finally, it considered that Article 6 of the Convention did not create any grounds of appeal in cassation other than the grounds provided for in the Code of Criminal Procedure.

COMPLAINTS

1. The applicant complains under Article 6 para. 1 of the Convention that the courts which tried him were not independent and impartial. He claims that the real aim of the proceedings was to prevent him from being elected. In this connection he draws the Court's attention to the fact that the proceedings against him ran parallel to those against Sadik Ahmet Sadik, another Turkish Muslim independent candidate in the same elections, which gave rise to the case of Ahmet Sadik v. Greece (Eur. Court HR, judgment of 15 November 1996, Reports 1996-V, p. 1638). He also submits that a number of other criminal actions are still pending against him in Greece, which are all related to his struggle for the rights of the Turkish Muslim minority of Western Thrace. According to the applicant the fact that the charges against him were prefabricated is, moreover, borne out by the unreasonable character of the allegations of TOB who disregarded the fact that 2,000,000 drachmas was at the time a very large sum of money which could not have been possibly offered to obtain political advantage.

2. The applicant also complains under the same provision that the courts did not give him the benefit of doubt and did not assess the evidence correctly since they preferred the evidence of the prosecution witnesses, which was hearsay, to that of the defence witness. Moreover, he submits that the law on the bribery of voters was incorrectly applied in the case of somebody who merely offered to pay money for the transport of voters, something not unusual during elections in Greece.

3. Finally, the applicant complains of the length of the proceedings which he attributes to a large extent to TOB's repeated failure to appear before the court, as a result of which a number of hearings were adjourned.

PROCEEDINGS

The application was introduced before the European Commission of Human Rights on 5 August 1997 and registered on 22 August 1997.

On 3 December 1997 the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 24 February 1998. The applicant replied on 27 April 1998.

By virtue of Article 5 § 2 of Protocol No. 11 to the Convention, which entered into force on 1 November 1998, the application shall henceforth be examined by the European Court of Human Rights.

THE LAW

1. The applicant complains under Article 6 para. 1 of the Convention that he was not tried by independent and impartial tribunals.

Article 6 para. 1 of the Convention provides as follows:

> "In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by an independent and impartial tribunal established by law."

The Court recalls that, in order to determine whether a tribunal can be considered to be independent, it must have regard to the manner of appointment of its members, the duration of their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence (Eur. Court HR, Findlay v. United Kingdom judgment of 25 February 1997, Reports of Judgments and Decisions 1997-I, p. 281, para 73. In order to determine whether a tribunal can be considered to be impartial, the Court must adopt a subjective and an objective approach. The first involves endeavouring to ascertain the personal conviction of the judges in the particular case, while the second aims at determining whether the judges offered sufficient guarantees to exclude any legitimate doubt in this respect. The personal impartiality of a judge must be presumed until there is proof to the contrary (Eur. Court HR, Piersack v. Belgium judgment of 1 October 1982, Series A no. 53, p. 14, para. 30).

The Court notes that most of the applicant's allegations concern either matters which were not part of the dispute before the courts or which were not directly related to the judicial proceedings in question or in which the judges would not normally have had any involvement. Having examined the applicant's arguments, the Court finds nothing which would allow the conclusion that the judges who tried him were personally prejudiced against him. Nor is there any other fact or evidence to support his complaint that the courts were not independent and impartial.

It follows that there is no appearance of a violation of the right to an independent and impartial tribunal in the particular circumstances. The Court, therefore, considers that this part of the application is manifestly ill-founded and must be rejected as inadmissible in accordance with Article 35 para. 3 of the Convention.

2. The applicant complains under Article 6 para. 1 of the Convention that he did not have a fair hearing because the courts did not give him the benefit of doubt, did not assess the evidence correctly and applied incorrectly the relevant provisions of the Criminal Code in his case.

As regards the applicant's complaints concerning the benefit of doubt and the assessment of evidence, the Court recalls that it is not its rôle to assess whether a national court has assessed the evidence in a case correctly. The Court's task is to establish whether the evidence for and against the accused was presented in such a way as to ensure a fair trial (see Eur. Court HR, Asch v. Austria judgment of 26 April 1991, Series A no. 203, p. 10, para. 26). The Court notes that the applicant had the opportunity to examine the witnesses against him and to call witnesses in his defence. Moreover, the applicant does not allege that the way in which the evidence was presented was unfair. The Court finds no appearance of a violation of the right to a fair hearing in this respect.

As regards the applicant's complaint concerning the application of national law, the Court recalls that it is not competent to deal with applications alleging that errors of national law have been committed by the national courts, except where it considers that such errors might have involved a possible violation of the rights and freedoms set out in the Convention (Eur. Court HR, Schenk v. Switzerland judgment of 12 July 1988, Series A no. 140, p. 29, para. 45). Having examined the national court's judgements, the Court considers that no appearance of such a violation arises in the particular circumstances

In the light of all the above, the Court considers that this part of the application is manifestly ill-founded and must be rejected as inadmissible in accordance with Article 35 para. 3 of the Convention.

3. The applicant complains under Article 6 para. 1 that the proceedings against him were unreasonable in length.

The Government submit that there were no delays in the pre-trial phase of the proceedings. The proceedings before the first instance court lasted approximately 18 months, which is reasonable. The applicant was responsible for the adjournments of 12 September 1989 and 20 February 1990. Moreover, the State cannot be held responsible for the adjournments of 9 January 1990 and 19 June 1990 which were caused by the absence of certain witnesses who had been properly summoned and who were fined for their failure to appear. The delays caused by the industrial action of the clerks did not exceed seven months and five days. As regards the second instance proceedings, the Government contend that the delay in the fixing of the first hearing was related to the number of cases pending before the courts as a result of the lawyers' strike, an event for which the State is not responsible. Between the first and second adjournment there was a delay of eleven months which was reasonable given the effects of the lawyers' strike. The second adjournment had to be ordered because

the witnesses were not present again and there were no significant delays after that. Finally, the Government point out that the cassation proceedings were concluded within three and a half months.

The applicant submits that the State is responsible for the delays arising from the absence of prosecution witnesses. The applicant himself was responsible for delays of six months and eight days. However, the reason for his failure to attend the hearing was an illness caused by acute anxiety related to the criminal proceedings against him. In his view, the State should have taken measures to deal with the structural problems underlying the court clerks' industrial action. In any event, adjourned cases had to be given priority and not be placed at the end of the list. Finally, the applicant argues that the delays in the second instance proceedings were entirely unreasonable.

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 regarded as manifestly ill-founded within the meaning of Article 35 para. 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 complaint that the criminal proceedings against him were unreasonably lengthy;

DECLARES INADMISSIBLE the remainder of the application.

Erik Fribergh
Registrar

Marc Fischbach
President