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. 67115/01
by Sali KEHAGIA
against Greece

The European Court of Human Rights (First Section), sitting on 3 April 2003 as a Chamber composed of

Mrs F. TULKENS, *President*,
Mr C.L. ROZAKIS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mr A. KOVLER,
Mrs E. STEINER, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having regard to the above application lodged on 20 September 2000,

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 Sali Kehagia, is a Greek national, who was born in 1953 and lives in Xanthi. The Government are represented by Mr M. Apessos, Senior Adviser at the State Legal Council, and Mr D. Kalogiros, Legal Assistant at the State Legal Council.

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

The applicant, who considers himself a member of the Muslim Turkish minority of Thrace, is a graduate of the Special Academy for Teachers of Thessaloniki. He used to work as a teacher in the minority schools of Thrace. His conditions of employment were no different from those of other civil servants.

## A. General background of the case

On 18 January 1993 the Minority Schools Office of the Prefecture of Rodopi called all the Muslim teachers of the minority schools of Rodopi to attend an educational meeting on 1 February 1993. The aim of the meeting was to present new books for the teaching of the Turkish language, which were to be delivered to the directors of the schools between 2 and 5 February 1993. A similar order was issued on 19 January 1993 by the Minority Schools Office of the Prefecture of Xanthi.

On 26 January 1993 the Co-ordination Committee of the Highest Council of the Muslim Turkish Minority of Western Thrace issued a statement to the effect that the content of these books "was in breach of the autonomy of the Muslim Turkish Minority of Western Thrace" and failed to respect certain international agreements. The Muslim teachers were called upon not to collect these books and the Muslim pupils not to attend school between 1 and 5 February 1993, in order to voice the protest of the Muslim Turkish Minority of Western Thrace.

On 29 January 1993 the Union of Turkish Teachers of Western Thrace issued a statement to the effect that the Turkish schools of Western Thrace would be closed between 1 and 5 February 1993, because the Turkish teachers of Western Thrace were against the Turkish language books which the Greek State intended to distribute to the pupils of the minority schools. The statement also said that all the Turkish Muslim teachers of Western Thrace would participate in the strike. Reference was made to the members of the Union of Teachers of Western Thrace who were graduates of the Special Academy for Teachers of Thessaloniki. The statement specified that all those who felt they were Turkish and who wanted to learn or teach the Turkish language would take part in the boycott.

On an unspecified date, a Muslim religious leader, the mufti of Xanthi, called on the Muslim teachers who felt they were Turkish not to go to the presentation of the books on 1 February 1993.

On 1 February 1993 eleven teachers of the minority schools of Xanthi, including the applicant, signed a statement to the effect that they would not attend the educational meeting in the Minority Schools Office of the Prefecture of Xanthi in order to protest about certain unfair decisions against them concerning their posting, transfer and secondment and their exclusion from training seminars in Thessaloniki and Strasbourg. They specified that they would not carry out their duties between 1 and 5 February 1993.

On 5 February 1993 the Executive Committee of the Highest Council of the Muslim Turkish Minority of Western Thrace issued a statement congratulating the pupils and teachers who took part in the mobilisation which showed the length to which the minority was prepared to go in order to vindicate its rights.

### B. Disciplinary proceedings against the applicant

On 8 February 1993 the Minority Schools Office of the Prefecture of Xanthi decided to institute disciplinary proceedings under Article 206 § 1 of the Civil Servants' Code against thirteen minority school teachers, including the applicant, for having failed to attend the educational meeting of 1 February 1993.

On 10 February 1993 the Regional Disciplinary Board of Xanthi ordered an inquiry and decided provisionally to suspend the applicant from his duties for a year pending the outcome of the disciplinary proceedings against him.

On 31 March 1993 the Ministry of Education confirmed the decision of the Regional Disciplinary Board of Xanthi regarding the provisional suspension of the applicant from his duties.

On 5 April 1994 the Regional Disciplinary Board of Xanthi issued a decision in which it considered the following:

– Firstly, the applicant had been asked by his superiors to attend the educational meeting of 1 February 1993 but had failed to do so, arguing that attendance at the meeting would have disrupted his relationship with his pupils and their parents and put his personal integrity in danger. However, the Board considered that this excuse was not valid, because the meeting would have taken place in the city of Xanthi far from the applicant's school area. Moreover, the applicant took part in the strike between 1 and 5 February 1993 complying with the order and appeal of the irregular Co-ordination Committee of the Highest Council of the Muslim Turkish Minority of Western Thrace and the appeal of the illegally self-proclaimed mufti of Xanthi calling on the Muslim teachers who felt they were Turkish

not to attend the meeting of 1 February 1993. He had accused the State of persecuting him. His illegal acts had contributed to creating tension and commotion in the minority community. The applicant had allied himself with certain subversive elements in the minority community who falsely contended that there was no equality before the law in Western Thrace. Thus, he had become an agent of foreign anti-Greek powers. These facts constituted the following disciplinary offences: not having faith in and dedication to his country (Article 206 § 1–1 of the Civil Servants' Code), refusing to discharge his duties or employing obstructive tactics (Article 206 § 1–19 of the Code), taking part in a strike in breach of Article 23 § 2 of the Constitution and the relevant legislation (Article 206 § 1–20 of the Code) and intentionally engaging in an act or omission which could damage or endanger the interests of the State (Article 206 § 1–27 of the Code).

– Secondly, the applicant had publicly criticised the Ministry of Education on the ground that the new books were distributed in breach of international agreements concluded by Greece. As a result, he had committed the disciplinary offence of criticising the actions of his superiors in public using phraseology which showed a lack of respect or intentionally using unfounded arguments (Article 206 § 1–6 of the above-mentioned Code).

– Thirdly, the applicant had become an organ of irregular committees acting against the interests of the nation. His actions had stirred up trouble in the minority community and had led to the involvement of Turkish newspapers, to tension between the two countries and to criminal proceedings being instituted against parents who had disrupted the functioning of the schools. As a result, the applicant had committed the disciplinary offence of failing to respect a duty imposed by criminal law (Article 206 § 1–28 of the Code).

The Board was fully satisfied that the applicant "acting in full conscience and with intent and malice, behaving in a manner incompatible with [his] status as civil servant, acting against the nation and obeying the commands of anti-Greek power structures, aimed at destabilising the region where the situation was until then normal and creating social unrest". In the light of all the above, the Board decided to dismiss the applicant.

On 7 April 1994 the Prefect of Xanthi ordered the applicant's dismissal by virtue of Article 12 of Presidential Decree no. 1024/1979. Under that decree, pertaining to the appointment and career of Muslim teachers in the minority schools of Thrace, the Prefect is the competent authority to pronounce the termination of service of Muslim teachers.

On 30 May 1994 the applicant challenged the decision of the Disciplinary Board and the Prefect's decision before the Supreme Administrative Court. He claimed that he did not lack faith in and dedication to his country, that he had not acted against social order, that he

had the right to engage in objective and reasonable criticism of the actions of his superiors or the Government, that he had not refused to discharge his duties but had instead participated in a lawful strike, that he had not engaged in any acts which could have caused damage to the State or in any criminal offences, that he had been forced not to collect the books in person because his life had been threatened by other Muslims, that the Board had attributed wrong motives to his actions which were not anti-Greek and that his punishment was aimed at his destruction. He further submitted that the hearing before the Disciplinary Board had not been preceded by a proper inquiry, that he had been punished for offences which were not mentioned in the decision instituting proceedings against him and that the Board had not heard a number of witnesses he had proposed. Finally, the applicant argued that the decision of the Board was not duly reasoned in that it failed to specify how his actions amounted to the particular disciplinary offences which should be punished with the particular penalty.

On 22 June 1995 the Supreme Administrative Court rejected the applicant's appeal against the decision of the Disciplinary Board of 5 April 1994. The court considered that the inquiry ordered on 10 February 1993 satisfied the requirements of the law and that the Board had not failed to examine any witnesses proposed by the applicant. The court also considered that the applicant could not be punished for facts other than those which were mentioned in the decision of 8 February 1993 by which the disciplinary proceedings had been instituted. The applicant could only be punished for having failed to attend the educational meeting of 1 February 1993. However, the Disciplinary Board and the Supreme Administrative Court remained free to examine these facts under different legal provisions from those mentioned in the decision instituting disciplinary proceedings. The court considered that the applicant's failure to attend the meeting of 1 February 1993 in order to participate in a strike between 1 and 5 February 1993 amounted to the disciplinary offence of serious disobedience under Article 207 § 4–10 of the Civil Servants' Code. The court found that the punishment imposed was appropriate given the circumstances in which the offence had taken place. The court referred in this connection to the statement of 26 January 1993 of the Co-ordination Committee of the Highest Council of the Muslim Turkish Minority of Western Thrace, the statement of 29 January 1993 of the Union of Turkish Teachers of Western Thrace and the statement of the mufti of Xanthi which called on all the Muslim teachers who considered themselves Turkish not to attend the educational meeting of 1 February 1993. The court considered that the applicant had obviously associated his failure to comply with the order to attend the educational meeting with the above-mentioned statements of organisations which purported to represent the self-proclaimed Turkish minority of Western Thrace. Seen in the light of the above, the applicant's actions had had as a result the disruption of the functioning of the minority

schools in Western Thrace in which the State was particularly interested. They had also resulted in social unrest among the Muslim minority of this sensitive region. This in turn could have resulted in dangerous, albeit unwarranted, disruption of the friendly relations between Greece and neighbouring countries and in the disruption of the harmonious coexistence between the Greek citizens, Muslim and Christian, who lived in Western Thrace.

Finally, the court considered that the decision of the Board was duly reasoned. All the elements of the disciplinary offence of serious disobedience were set out in the decision which specified that the applicant had not attended the meeting of 1 February 1993, although he had been asked to do so by his superiors. The decision also specified that the applicant had complied with the order and appeal of the irregular Co-ordination Committee of the Highest Council of the Muslim Turkish Minority of Western Thrace and the appeal of the illegally self-proclaimed mufti of Xanthi calling on the Muslim teachers who felt they were Turkish not to attend the meeting of 1 February 1993 (decision no. 3596/1995).

On 4 December 1995 the Prefect of Xanthi revoked his decision of 7 April 1994 and, in compliance with decision no. 3596/1995 of the Supreme Administrative Court, ordered the applicant's dismissal as from the same date.

On 4 April 1996 the Supreme Administrative Court struck out the proceedings instituted against the Prefect's decision of 7 April 1994, on the ground that the decision complained of had already been revoked by the Prefect (decision no. 1718/1996).

On 2 December 1997 the Prefect ordered for the third time the applicant's dismissal.

On 4 March 1998 the applicant appealed against the Prefect's decision of 2 December 1997 to the Administrative Court of Appeal of Komotini. He claimed that all other civil servants were dismissed by ministerial decision and complained that his dismissal by decision of a Prefect was contrary to religious freedom. He further complained that he was not previously heard by the Prefect. The applicant further invoked Articles 6 and 14 of the Convention and 1 of Protocol No. 1.

On 22 March 2000 the Administrative Court of Appeal rejected the appeal (decision no. 80/2000). The court held that, by definition, the Prefect has a better knowledge of the local situation than the Minister; therefore, it could not be sustained that the delegation to the Prefect to pronounce the termination of service of Muslim teachers violated religious freedom. Moreover, the court held that the Prefect's decision was aimed at complying with the relevant decisions of the Supreme Administrative Court; therefore, the prior hearing of the applicant was not required. The applicant did not appeal against this decision to the Supreme Administrative Court.

### C. Civil and administrative proceedings instituted by the applicant

The applicant claims that he has instituted civil and administrative proceedings in order to recover several sums (arrears of salaries, compensation for his dismissal, etc.). The applicant alleges that a set of proceedings instituted on 30 June 1997 before the First Instance Court of Rodopi is still pending. He further alleges that on 12 October 1998 the Minority Schools Office notified to him a decision of the Minister of Education that his pecuniary claims were statute-barred.

On 2 September 1997 the applicant instituted proceedings also before the First Instance Administrative Court of Komotini. On 28 December 2001 the court awarded the applicant EUR 4,455 for pecuniary damage (decision no. 280/2001). The applicant did not appeal against this decision within the sixty days time-limit provided for by the Code of Administrative Proceedings.

## COMPLAINTS

1. The applicant complains under Articles 6 § 1 and 13 of the Convention about the fairness of the proceedings which led to his dismissal.

2. The applicant further complains under Article 6 § 1 of the Convention about the length of the proceedings.

3. The applicant complains under Articles 9 and 14 of the Convention that he was dismissed because he is a member of the Turkish Muslim minority of Thrace.

4. Lastly, the applicant complains under Article 1 of Protocol No. 1 that the State failed to compensate him for his dismissal.

## THE LAW

1. The applicant complains about the fairness of the proceedings which led to his dismissal. He claims that the Disciplinary Board was not an impartial and independent tribunal. Moreover, he complains that the Supreme Administrative Court struck out the proceedings on 4 April 1996 without examining the merits of his complaints. Finally, he complains that the Administrative Court of Appeal of Komotini rejected his appeal invoking the previous courts' decisions, which were unfair. He stresses that the State authorities to which he appealed, instead of granting him appropriate relief, caused him further prejudice. He relies on Articles 6 § 1 and 13 of the Convention.

Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

> " In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by [a] tribunal established by law."

Article 13 of the Convention provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Government allege that the application is substantially the same as application no. 29764/96, *Imam and Others v. Greece*, which was rejected by the European Commission of Human Rights on 20 October 1997.

The applicant replies that his case contains new information and that the Court is competent to examine it.

Under Article 35 § 2 (b) of the Convention the Court shall not deal with any application submitted under Article 34 which is substantially the same as a matter that has already been examined, provided it contains no relevant new information. The Court finds that the present application contains such information, in that the proceedings before the domestic courts continued after the rejection of the case of *Imam and Others v. Greece* by the Commission. It follows that the present application is not inadmissible under Article 35 § 2 (b) of the Convention.

### A. Fairness of the proceedings before the Disciplinary Board and before the Supreme Administrative Court (decision of 4 April 1996)

The Court recalls that according to Article 35 § 1 of the Convention it "may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken".

In the present case the Court notes that the decision of the Disciplinary Board was taken on 5 April 1994 and was confirmed by a decision of the Supreme Administrative Court of 22 June 1995. Further, the other decision of the Supreme Administrative Court complained of was taken on 4 April 1996.

Given that the application was introduced on 20 September 2000, the above complaints are lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

### B. Fairness of the proceedings before the Administrative Court of Appeal of Komotini

Even assuming that Article 6 applies in the instant proceedings and that the applicant has exhausted domestic remedies, in view of the fact that he failed to appeal against the decision of the Administrative Court of Appeal of Komotini, this complaint must be rejected for the following reasons.

The Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far 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 (see, among many other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR-I).

In the present case, the Court notes that the applicant had the benefit of adversarial proceedings. At the various stages of those proceedings he was able to submit the arguments he considered relevant to his case. There is no evidence to suggest that the applicant was deprived of a fair trial within the meaning 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 further complains under Article 6 § 1 of the Convention about the length of the proceedings. To his mind, the proceedings started on 8 February 1993 (when disciplinary proceedings were instituted against him) and ended on 22 March 2000 (when the Administrative Court of Appeal of Komotini rejected his appeal against the Prefect's decision of 2 December 1997 ordering his dismissal).

The Government argue that the proceedings started on 4 March 1998 and that their length is not subject to criticism.

The Court cannot accept the applicant's argument that the proceedings which ended on 22 March 2000 and are the subject matter of the present application started on 8 February 1993. That was the date when disciplinary proceedings were instituted against the applicant by the Regional Disciplinary Board. However, these proceedings ended on 22 June 1995, when the Supreme Administrative Court rejected the applicant's appeal against the decision of the Regional Disciplinary Board to dismiss him. This is so also in view of the *Imam and others v. Greece* application (cited above), where the former Commission considered that the disciplinary proceedings were completed on 22 June 1995. Therefore, the Court is of the

opinion that the proceedings complained of in the present application started on 4 March 1998 when the applicant appealed against the Prefect's third decision to dismiss him and ended on 22 March 2000. They therefore lasted two years and eighteen days for one level of jurisdiction.

The reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, *Laino v. Italy* [GC], no. 33158/96, § 18, ECHR 1999-I). Only delays for which the State can be held responsible may justify a finding that a "reasonable time" has been exceeded (*Papachelas v. Greece* [GC], no. 31423/96, § 40, ECHR 1999-II).

In the present case the Court does not find any lengthy periods imputable to the State authorities. Having regard to the overall duration of the proceedings which does not appear of undue length, the Court considers that the length of the proceedings complained of was not excessive.

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

3. The applicant complains that he was dismissed because he is a member of the Turkish Muslim minority of Thrace. He claims that, by applying Presidential Decree no. 1024/1979, the domestic authorities treated him differently from Christian teachers and violated his right to freedom of religion. He relies on Articles 9 and 14 of the Convention.

Article 9 reads 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 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The

existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law (see, *mutatis mutandis*, *Civet v. France* [GC], no. 29340/95, § 41, ECHR 1999-VI).

The Court notes that the applicant did not appeal to the Supreme Administrative Court against the decision of the Administrative Court of Appeal of Komotini of 22 March 2000. The fact that the applicant had previously challenged his dismissal before the Supreme Administrative Court may dispense him from the obligation to appeal again to it in respect of his complaint concerning the fairness of the proceedings (see above), but does not dispense him from the obligation to appeal to the Supreme Administrative Court in respect of his complaint concerning his right to freedom of religion: In fact, the applicant is now raising a new complaint which the Supreme Administrative Court did not have the opportunity to examine in its judgment of 22 June 1995, namely that his dismissal by the decision of the Prefect and not by ministerial decision is contrary to religious freedom. The applicant could have brought this issue to the attention of the Supreme Administrative Court and thus have substantially increased his prospects of success. The applicant has not invoked any special circumstances which could absolve him from the obligation to exhaust that remedy.

In sum, the applicant, in failing to appeal to the Supreme Administrative Court, did not provide the Greek courts with the opportunity which is in principle intended to be afforded to Contracting States by Article 35, namely the opportunity of preventing or putting right the violations alleged against them (see, *mutatis mutandis*, *Civet v. France*, op. cit., § 44).

It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

4. Lastly, the applicant complains that the State failed to compensate him for his dismissal. He relies on Article 1 of Protocol No. 1 which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government affirm that the applicant was awarded compensation for a certain period after his dismissal, as stated in decision no. 280/2001. In any event, the applicant did not appeal against this decision and has therefore not exhausted domestic remedies as required by Article 35 § 1 of the Convention.

The applicant replies that he has only been compensated in part for his dismissal and that decision no. 280/2001 was issued only to disguise the fact that the Greek State is depriving him of his salary for more than eight years. He claims that he intends to appeal against decision no. 280/2001, because this decision is in substance a sentence imposed on him.

In so far as the applicant complains that the State is depriving him of his salary for more than eight years, the Court notes that he was awarded compensation for a certain period after his dismissal, as stated in decision no. 280/2001 of the First Instance Administrative Court of Komotini. He cannot therefore argue that he received no compensation for his dismissal. In this respect the Court notes that the applicant has failed to substantiate his allegations and has not produced sufficient evidence to prove that he is entitled to a certain amount of salary and/or compensation. In fact, it appears that the applicant has only an expectation that his claims will be granted, which cannot be regarded as a "possession" within the meaning of Article 1 of Protocol No. 1, since it has not been recognised and determined by a judicial decision having final effect. That is the condition for a claim to be certain, enforceable and, accordingly, protected by Article 1 of Protocol No. 1 (see, among other authorities, *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, pp. 84–85, §§ 59–62).

In so far as the applicant complains about decision no. 280/2001, the Court notes that the applicant failed to appeal against this decision within the time-limit provided for by law. He has therefore not exhausted domestic remedies in this respect.

It follows that this complaint must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Søren NIELSEN
Deputy Registrar

Françoise TULKENS
President