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. 45629/99
by Nikodimos TSARKNIAS
against Greece

The European Court of Human Rights (Second Section) sitting on 30 March 1999 as a Chamber composed of

Mr M. Fischbach, *President*,
Mr C. Rozakis,
Mr G. Bonello,
Mrs V. Strážnická,
Mr P. Lorenzen,
Mr A.B. 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 11 May 1998 by Nikodimos TSARKNIAS against Greece and registered on 25 January 1999 under file no. 45629/99;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Greek national, born in 1942 and living in Athens.

He is represented before the Court by Mrs I. Kourtovik, a lawyer practising in Athens.

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

The applicant considers himself to be part of a Macedonian ethnic minority in Greece. In 1973 he was ordained a priest in the Greek Orthodox Church. He used to live and work in the northern district of Florina and during the 1970s and 1980s became increasingly involved in the advocacy of greater cultural rights for Macedonian Greeks. In April 1992, he became a monk in the monastery of St George near Skopje. In February 1993 he was expelled from the Greek Orthodox Church. He claims that, since 1989, he has been arrested thirteen times and prosecuted for a series of offences, in particular that of abusing of his position as a priest.

In January 1992 the applicant was involved in an incident in his church in the village of Aghios Athanasios. The bishop of the city of Florina, who arrived at the church to attend the mass celebrated by the applicant, was confronted with thirty or forty persons shouting insults at him and calling for the Church to support Macedonian cultural rights. The applicant was accused of disrupting a religious congregation, abusing his position as a priest and disturbing citizen's peace.

On 12 February 1996, he was tried in absentia (because he was unable to attend for health reasons) by the Salonica Criminal Court and was sentenced to forty months' imprisonment for having disrupted a Christian congregation. The Criminal Court had previously rejected a request to adjourn the hearing. After having heard six witnesses for the prosecution, it found that on 29 December 1990, the applicant incited the congregation to violent disorder by saying to them that if the bishop arrived at the church by saying that "you must make him understand that you don't want him to come in and if he does, blood will flow". It also found that on 1 January 1992, while the bishop had managed to enter the church and had started celebrating the mass, the applicant unplugged the church's microphones.

The applicant appealed against this judgment to the Salonica Court of Appeal composed of three judges, which heard the case on 12 February 1997 in the presence of the applicant and his lawyer. Ten witnesses were heard, five for the prosecution and four for the defence. The Court of Appeal delivered its judgement on the same day. It found the applicant guilty of disturbing the citizen's peace (Article 190 of the Code of Criminal Procedure), of disrupting a religious congregation (Article 200) and of abusing his position as a priest (Article 196) ; it upheld the applicant's conviction but reduced his prison sentence to twenty-four months and converted it into a pecuniary penalty of 1 500 drachmas (GDR) per day.

On 8 April 1998, the applicant appealed on points of law. He maintained that although he had invited the Appeal Court to hear ten witnesses on his behalf, the president of the Court refused to hear two of them and that this refusal had not been included in the minutes of the hearing although the applicant's lawyer had invited the Court to do so. He also alleged that the Court of Appeal, contravening Article 339 § 2 of the Code of Criminal Procedure, had interrupted the taking of evidence and had examined in between some other small cases ; as a result, the applicant had lost the thread of his defence in violation of Article 6 of the European Convention. He maintained that the judgment of the Court of Appeal was not

reasoned because it had merely reproduced the wording of the indictment and had not specified in what way the accused had actually committed the offences. In addition, he alleged that the members of the Court of Appeal and the Public Prosecutor lacked impartiality towards him. Finally, he alleged that the fact that the Court of Appeal refused to call all the witnesses for the defence amounted to a lack of public hearing.

The Court of Cassation dismissed the appeal on 11 November 1997. It noted that the applicant failed to appeal to the Court of Appeal sitting in full when its president rejected the request to hear six witnesses for the defence (Articles 333 § 2, 335 § 2 and 170 § 2 of the Code of Criminal Procedure). It also noted that it did not appear from the minutes that any interruption of the taking of evidence had ever occurred during the hearing. It considered that the Court of Appeal had sufficiently motivated its judgement and held that the plea of impartiality of the judges was not, according to Greek law, a ground for quashing the judgment of the Court of Appeal.

COMPLAINTS

The applicant complains that there has been a violation of Article 6 §§ 1,2 and 3 b), c) and d) and Articles 9 and 14 of the Convention.

THE LAW

1. The applicant alleges several violations of Article 6 of the Convention, which provides as follows :

> "1. In the determination … of any criminal charge against him, everyone is entitled to a fair …hearing … by an independent and impartial tribunal… .
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
> …
> b. to have adequate … facilities for the preparation of his defence;
> c. to defend himself in person or through legal assistance …
> d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ;
> …"

The applicant claims that he has been deprived of a fair trial. In the first place he maintains that the Greek Courts lacked impartiality because of his conscience and his origin ; he alleges that the presiding judge showed personal animosity towards him and stated at the beginning of the trial that it was crystal-clear that the applicant had committed the offences. Secondly, the presumption of innocence was infringed because all the judges declared that they considered him guilty even before the trial. Thirdly, he had not had adequate facilities for the preparation of his defence because his request to adjourn the hearing before the Criminal Court had been turned down and he had thus been tried in absentia. Finally, the Court of Appeal refused to call all the witnesses which the defence had asked to be called and those who had been called were not examined under the same conditions as witnesses against him.

The Court points out that paragraphs 2 and 3 of Article 6 represent specific applications of the general principle stated in paragraph 1 of the Article. The presumption of innocence embodied in paragraph 2 and the various rights of which a non-exhaustive list appears in paragraph 3 are constituent elements, amongst others, of the notion of a fair trial in criminal proceedings (see the Deweer v. Belgium judgment of 27 February 1980, Series A no. 35, p. 30, § 56). The question whether a trial conforms to the standards laid down in Article 6 §§ 1 and 2 is not decided on the basis of an isolated consideration of a particular incident but on that of an evaluation of the trial as a whole (see, *mutatis mutandis*, among many other authorities, the Doorson v. the Netherlands judgment of 26 March 1996, Reports of Judgments and Decisions 1996-II, p. 470, § 67).

As regards the refusal of the Salonica Criminal Court to adjourn the hearing, the Court notes that neither the applicant nor his lawyer appeared at the trial and that the Criminal Court based its decision only on the statements made by six witnesses for the prosecution. However, there was a full rehearing of the case by the Court of Appeal where the applicant was present and therefore this hearing rectified any errors which might have been committed at first instance. Even assuming that the applicant had suffered actual prejudice from this complete lack of representation before the Salonica Criminal Court, he did not raise before the Court of Cassation the fact that the former refused to adjourn the hearing. He has therefore not availed himself of the remedies open to him under Greek law.

As to the calling of witnesses for the defence, the Court recalls that, as a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce. Article 6 § 3 (d) leaves it to them to assess whether it is appropriate to call witnesses ; it does not require the attendance and examination of every witness on the accused's behalf : its essential aim, as is indicated by the words "under the same conditions", is a full "equality of arms" in the matter (see the Vidal v. Belgium judgment of 22 April 1992, Series A no. 235-B, p. 32, § 33). In the present case the Court notes that the Athens Court of Appeal did not give any reasons for its refusal to hear some of the defence witnesses, but it heard several witnesses for the prosecution and for the defence before giving judgment. The Court recalls that it is normally for the national courts to decide whether it is necessary or advisable to call a witness and that there may be exceptional circumstances which could prompt the Court to conclude that the failure to hear a person as a witness is incompatible with Article 6 (see the Bricmont v. Belgium judgment of 7 July 1989, Series A n° 158, p. 31, § 89). However, in the instant case, the Court does not have sufficient grounds to form the view that such circumstances exist : the applicant has not provided any information enabling the Court to assess the importance of the witnesses who were not summoned as well as the relevance that their testimonies could have had for the outcome of the trial.

As regards the alleged animosity and the alleged statement of the presiding judge of the Court of Appeal, the Court notes that the case file does not corroborate that allegation and, moreover, the applicant or his lawyers did not challenge the judges for bias against the applicant.

In sum, the circumstances of the present case do not disclose any appearance of violation of the right to a fair trial enshrined by Article 6 §§ 1, 2 and 3 of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

2. The applicant also alleges a violation of Article 9 of the Convention, which 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."

The applicant claims that the incriminated judgments put an end to an orchestrated campaign against him and undermined his position as a priest. Accordingly, his right to manifest his religion in worship and practice had been infringed

The Court notes that the applicant had been prosecuted and convicted for having disrupted a religious congregation and a mass conducted by the bishop of the region on whom depended his church. Under these circumstances , the Court considers that the facts of the case do not constitute an interference with the applicant's rights under Article 9 § 1.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

3. The applicant alleges a violation of Article 14 of the Convention, which provides as follows :

> "The enjoyment of the rights and freedoms set forth in this 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 applicant maintains that he was a victim of discrimination since the proccedings were conducted in a biased way because of his national origin and conscience.

According to the Court's established case-law, Article 14 has no independent existence since it has effect solely in relation to the "enjoyment of rights and freedoms" safeguarded by the substantive provisions of the Convention. The Court called on to examine whether there has been a violation of Article 14 taken together with Article 6, notes that the applicant has not substantiated his allegation and it does not appear from the file that he has been discriminated on grounds of national origin and conscience.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Erik Fribergh
Registrar

Marc Fischbach
President