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

COURT (CHAMBER)

CASE OF HADJIANASTASSIOU v. GREECE

(Application no. 12945/87)

JUDGMENT

STRASBOURG

16 December 1992

In the case of Hadjianastassiou v. Greece*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr Thór VILHJÁLMSSON,
Mr J. DE MEYER,
Mr N. VALTICOS,
Mr S.K. MARTENS,
Mrs E. PALM,
Mr I. FOIGHEL,
Mr R. PEKKANEN,
Sir John FREELAND,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 26 June and 23 November 1992,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 12 July 1991, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12945/87) against the Hellenic Republic lodged with the Commission under Article 25 (art. 25) by a Greek national, Mr Constantinos Hadjianastassiou, on 17 December 1986.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Greece recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 6 and 10 (art. 6, art. 10) of the Convention.

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* The case is numbered 69/1991/321/393. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr N. Valticos, the elected judge of Greek nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 29 August 1991, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr J. Cremona, Mr Thór Vilhjálmsson, Mr J. De Meyer, Mrs E. Palm, Mr I. Foighel, Mr R. Pekkanen and Sir John Freeland (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

Subsequently, Mr S. K. Martens, substitute judge, replaced Mr Cremona, who had left the Court on the expiry of his term of office and whose successor had taken up his duties before the hearing (Rules 2 para. 3 and 22 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Greek Government ("the Government"), the Delegate of the Commission and the applicant's lawyer on the organisation of the procedure (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 14 February 1992 and the Government's memorial on 28 February. On 2 June the Secretary to the Commission informed the Registrar that the Delegate would submit oral observations.

On 12 March the Commission had produced various documents as the Registrar, at the Government's request, had asked it to do.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 23 June 1992. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr P. KAMARINEAS, Adviser
at the Legal Council of State, *Agent*,

Miss F. DEDOUSSI, Member
of the Legal Council of State, *Counsel*;

- for the Commission

Mr C.L. ROZAKIS, *Delegate*;

- for the applicant

Mr R. NISAND, avocat, *Counsel*.

The Court heard addresses by the above-mentioned representatives and by Mr Hadjianastassiou in person, as well as their answers to its questions.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

6. Mr Hadjianastassiou, a Greek national, is an aeronautical engineer. At the material time he was a captain in the air force.

As the officer in charge of a project for the design and production of a guided missile, he submitted, in 1982, a report to the Air Force Technological Research Centre ("K.E.T.A.") on the missile on which he had been working. In January 1983 he communicated to a private company ("ELFON Ltd") another technical study on guided missiles, which he had prepared himself.

A. The proceedings before the Athens Permanent Air Force Court

7. On 4 July 1984 a chamber of the Permanent Air Force Court of Athens (Diarkes Stratodikeio Athinon) charged the applicant and another person with disclosing military secrets (Article 97 of the Military Criminal Code, see paragraph 21 below).

On 22 October 1984 the court found Mr Hadjianastassiou guilty of having transmitted to ELFON a series of ten items of information together with "all the technical and theoretical data" appearing in the K.E.T.A. report. It sentenced him to two years and six months' imprisonment.

B. The proceedings before the Courts-Martial Appeal Court

8. The applicant and the prosecutor at the Courts-Martial Appeal Court (Epitropos tou Anatheoritikou Dikastiriou) appealed from that judgment.

9. Following a hearing held on 28 February and 1 March 1985, the Courts-Martial Appeal Court appointed two experts - professors at the Athens Polytechnic School - who, with two other experts, designated by the applicant, compared the two studies.

In their report of 26 September 1985 the two professors concluded as follows:

> "... in our opinion, the two studies, for the K.E.T.A. and ELFON, follow different methods, the two missiles are different and the second is not a copy of the first ... . Nevertheless, some transfer of technical knowledge inevitably occurred ... . It is not possible to determine the extent of such transfer beyond what is mentioned above under (b), (c) and (d), because the ELFON study and even more so the K.E.T.A. report were shoddily drafted and were full of imprecisions and omissions; it should be stressed that in both studies the aerodynamic data are erroneous ..."

They noted that Mr Hadjianastassiou had some technical knowledge, acquired during his studies in the United States. However, his participation

in the K.E.T.A. project had enriched his experience. The components of the missile and some of the theoretical data contained in the two studies could be found in various manuals included in the file and regarded as "available literature". These manuals were not classified as "secret", but it was not established that they were accessible to private individuals.

10. At a new hearing held on 21 and 22 November 1985 the Courts-Martial Appeal Court took evidence from nineteen witnesses on whether the two studies contained common data, whether the information which had formed the basis of the studies was freely available in scientific literature and whether the K.E.T.A. study had been classified as a "military secret".

11. After the hearing the Courts-Martial Appeal Court deliberated in private and considered the following questions formulated by its President:

> "1. Is Constantinos Hadjianastassiou guilty of having, between October 1982 and March 1983, unlawfully and intentionally communicated and disclosed to third parties military plans and information classified as secret and which had to remain secret in the military interests of the Greek State? [In particular, is he guilty of having] ..., in October 1982, after having contacted the company ELFON Ltd ... with a view to preparing and drawing up for the latter's benefit a study on guided missiles, for a financial consideration to be agreed with the said company when the work was in progress, unlawfully and intentionally, (a) communicated to the above-mentioned company general information concerning the guided missile which was being designed at the K.E.T.A. and its technical characteristics, although as project officer for the K.E.T.A. missile he knew that such information was secret and that the military interests of the Greek State required that it be kept secret; (b) transmitted to the same company several elements deriving from the study, relating to the project and on the same subject-matter, of the K.E.T.A. and from the whole production programme of the Greek guided missile ("laser kit") which existed at the centre and which concerned principally the dimensional diagram of the missile, its external geometry, its perimetric plan, its aerodynamic elements, its Nd-YAG laser type, its dynamic model, its dome, its schematic diagram, its seeker's fairing, its basic electronics data, as well as any other theoretical or technical elements contained in the ELFON Ltd study ..., which was elaborated entirely on the basis of the information transmitted and disclosed by him to the company and derived from the corresponding K.E.T.A. project and study, although he knew, in his capacity as project officer ..., that the information was secret and that the military interests of the Greek State required that it be kept secret?
>
> 2. Has it been established ... that, when he disclosed these military secrets, the accused believed, erroneously, that he was entitled to proceed in such a way or [, on the other hand,] that he reasonably believed that, having drawn up the K.E.T.A. study and used his own knowledge, he was entitled to elaborate a new study and submit it through the intermediary of the company ELFON Ltd to the Weapons Industry Department? Was this belief justifiable?
>
> 3. Has it been established ... that the military secrets thus disclosed, namely the general information which [the accused] communicated to the ELFON company concerning the guided missile ... and its technical characteristics, were of minor importance?

4. Should certain factors be taken into account in mitigation, namely that, prior to committing the above- mentioned act, the accused had led an honest and well-ordered private, family and professional life?

... "

12. According to the record of the deliberations, the Courts- Martial Appeal Court replied in the affirmative to questions 1 (a) (four votes to one), 3 and 4 (unanimously) and in the negative to questions 1 (b) (four votes to one) and 2 (three votes to two).

13. Giving judgment in Mr Hadjianastassiou's presence on 22 November 1985, it sentenced him for disclosure of military secrets of minor importance (Article 97 para. 2 of the Military Criminal Code, see paragraph 21 below) to a suspended term of five months' imprisonment, from which it deducted the four months and fourteen days which he had spent in detention on remand.

14. The President of the Courts-Martial Appeal Court read out the judgment, which did not refer to the questions put to the members of the court.

15. In order to obtain the text of these questions and the replies given, the applicant asked, on 23 November 1985, to see the record of the hearing. The registrar allegedly told him that he would have to wait for the "finalised version" of the judgment.

C. The proceedings before the Court of Cassation

16. On 26 November 1985 - within the five days prescribed in Article 425 para. 1 of the Military Criminal Code (see paragraph 24 below) - Mr Hadjianastassiou appealed to the Court of Cassation ; in his appeal, which was a page long, he alleged "the erroneous application and interpretation of the provisions under which he [had been] convicted, namely Article 97 para. 2 of the Military Criminal Code".

17. He received a copy of the appeal judgment on 16 December; it was very short and did not state the grounds on which it was based, merely referring to the fixing of sentence.

18. On 23 December 1985 the applicant again demanded that the record be communicated to him; he received it on 10 January 1986. This document, which was detailed and reproduced in full the six questions and the replies obtained, ended as follows:

"...

The Court, by four votes to one ..., finds the accused Hadjianastassiou guilty of disclosing military secrets, which offence was committed in Attica between October 1982 and March 1983.

By three votes to two ..., the Court dismisses the defence request that Article 31 para. 2 of the Criminal Code (not guilty in the event of mistake) be applied.

The Court unanimously accepts that the military secrets communicated are of minor importance.

The Court unanimously accepts the factors pleaded in mitigation (Article 84 para. 2 (a) of the Criminal Code).

Having regard to the following Articles: ... Article 97 para. 2 taken in conjunction with paragraph 1 and with Article 98 (e) ..., Articles 366, 368 ... of the Military Criminal Code, ...;

... having regard to the gravity of the acts carried out, to the accused's personality, to the damage caused by the offence, to the specific nature of the offence, to the specific circumstances under which the offence was committed, to the degree of criminal intent on the part of the accused, to his character, to his personal and social situation, and to his conduct before and after the commission of the offence;

The Court sentences the accused to five months' imprisonment and orders him to pay the costs ...

It deducts from the above-mentioned term ... the period of four months and fourteen days spent in detention on remand and sets at sixteen days the term still to be served.

In view of the fact that the accused has no previous convictions and has never been sentenced to prison, and having regard to the circumstances under which the offence was committed, the Court considers it appropriate to suspend the remainder of the sentence ...

For these reasons,

Having regard to Articles 99, 100 and 104 of the Criminal Code,

The Court orders that the outstanding term of imprisonment be suspended for a period of three years.

..."

19. The hearing in the Court of Cassation (Areios Pagos) took place on 11 April 1986.

On 14 April Mr Hadjianastassiou filed a memorial in support of his oral pleadings. In his submission the wording of his appeal was sufficient to rule out any danger of its being dismissed for lack of precision. He complained of the shortness of the time-limit for appealing against the decisions of the military courts and the fact that it was impossible for the persons concerned to gain access, in good time, to the contents of the contested judgments. He also challenged the ground on which his conviction rested: the communication of "general information" on the K.E.T.A. missile, the charge which the Courts-Martial Appeal Court found to be proved, did not justify the application of Article 98 of the Military Criminal Code as that provision

concerned the disclosure of secret information of military importance, a charge of which the Courts-Martial Appeal Court had acquitted him by its reply to question 1 (b) (see paragraph 11 above). In his view, at the most his case might fall under Article 96 (see paragraph 21 below).

20. On 18 June 1986 the Court of Cassation declared the appeal inadmissible on the following grounds:

> "By the appeal before the Court ..., in which it is sought to have judgment no. 616/1985 of the Athens Courts-Martial Appeal Court set aside, the [applicant] challenges the aforesaid judgment on the ground of erroneous application and interpretation of the provisions under which he was convicted, namely Article 97 para. 2 of the Military Criminal Code. However, this sole ground of appeal, as formulated above, is vague inasmuch as it does not identify any concrete and specific error in the contested judgment which could constitute the basis of the complaint alleging the erroneous application and interpretation of the above-mentioned provision; the appeal must therefore be declared inadmissible by virtue of Articles 476 para. 1 and 513 para. 1 of the Code of Criminal Procedure."

II. THE RELEVANT DOMESTIC LAW

A. The disclosure of military secrets

21. The Military Criminal Code provides as follows:

Article 96

> "Communication of military information
>
> Any serviceman or any person employed by the armed forces who, without the consent of the military authorities, communicates or makes public by any means whatsoever information or assessments concerning the army shall be sentenced to a term of imprisonment not exceeding six months."

Article 97

> "Disclosure of military secrets
>
> 1. Any serviceman or any person employed by the armed forces who unlawfully and intentionally gives or communicates to others documents, plans, or other objects or secret information of military importance or allows such documents, plans, objects or information to be given or communicated to others, shall be sentenced to a term of imprisonment (katheirxi), or, where the above has been given or communicated to a foreign State or to an agent or a spy of a foreign State, to dishonourable discharge and death.
>
> 2. ... where the [information] communicated is of minor importance, the convicted person shall be sentenced to a term of imprisonment (filakisi) of not less than six months ..."

Article 98

"Secret information

'Secret information of military importance' means information concerning the Greek State or its allies which relates to:

...

(e) any object officially classified as secret.

..."

B. The courts' obligation to give the reasons for their decisions

22. The relevant provisions of the 1975 Constitution are worded as follows:

Article 93 para. 3

"All court judgments must be specifically and thoroughly reasoned and shall be pronounced in a public sitting ..."

Article 96

"...

4. Special laws may provide for:

(a) Questions relating to the army, navy and air force tribunals, which shall have no jurisdiction over civilians.

(b) Questions relating to prize courts.

5. The courts specified under sub-paragraph (a) of the preceding paragraph shall be composed of a majority of members of the judicial branch of the armed forces, who enjoy the guarantees of independence, as regards their person and their office, provided for in Article 87 para. 1 of the present Constitution. The provisions of paragraphs 2 to 4 of Article 93 shall be applicable to the hearings and judgments of these courts. The detailed rules for the implementation of the provisions of the present paragraph and the date of their entry into force shall be specified by statute."

23. According to the consistent case-law of the Court of Cassation, the failure to give reasons in the decisions of the military courts does not render them void. The application to these courts of Article 93 para. 3 of the Constitution requires, under the terms of Article 96 para. 5, the adoption of special laws, and this has not yet happened (judgments nos. 470/1975, 483/1979, 18/1980, 647/1983, 531-535/1984 (Nomiko Vima 1984, p. 1070) and 1494/1986). It is sufficient that such a decision answers the questions

put by the President; the questions must indicate accurately all the offences of which the defendant is accused so as to make it possible for a subsequent review by the Court of Cassation to ensure that the provisions of the criminal law have been properly applied to the facts in question as found by the military courts of first or second instance (judgments nos. 456/1986 and 1494/1986).

C. Appeals from the decisions of the military courts

1. The Military Criminal Code

24. The following texts are relevant here:

Article 366

"Formulation of questions. Principal question

1. The President shall put the questions concerning each accused.

2. The principal question shall be based on the operative part of the committal decision ... and shall include the question whether the accused is guilty ... as charged ..."

Article 368

"Supplementary questions (Parepomena zitimata)

In order to supplement the principal question or the alternative question, supplementary questions may be put concerning the accusation and factors aggravating, mitigating or expunging (exalipsin) the offence."

Article 425 para. 1

"Time-limit

Any appeal to the Court of Cassation (anairesi) must be filed within five days of the delivery of the judgment or, where the judgment has been delivered in the absence of the person convicted or his representative, of its notification ..."

Article 426

"Grounds for appeal to the Court of Cassation

Only the following grounds of appeal may be relied upon:

..."

(B) The erroneous application or interpretation of the substantive provisions of the criminal law."

2. The Code of Criminal Procedure

25. The Code of Criminal Procedure provides, inter alia, as follows:

Article 473 para. 3

"Time-limit for appealing

The time-limit for filing an appeal with the Court of Cassation begins to run on the date on which the final text of the judgment is entered into the register of the criminal court in question. It shall be so entered within fifteen days, failing which the President of the criminal court shall be liable to disciplinary sanctions."

Article 509 para. 2

"Memorial for an appeal to the Court of Cassation

In addition to the grounds invoked in the appeal ..., further submissions may be made in a supplementary memorial, which must be lodged with the office of the principal public prosecutor at the Court of Cassation not later than fifteen days before the hearing ...; once this time-limit has expired such memorials shall be inadmissible ..."

3. The relevant case-law of the Court of Cassation

26. According to the case-law of the Court of Cassation (judgments nos. 656/1985 (Nomiko Vima 1985, p. 891), 1768/1986, 205/1988 (Nomiko Vima 1988, p. 588) and 565/1988), Article 473 para. 3 of the Code of Criminal Procedure does not apply to appeals on points of law from the decisions of the military courts, as the time-limit for such appeals is fixed by Article 425 of the Military Criminal Code (see paragraph 24 above).

The grounds of appeal to the Court of Cassation must be set out in the initial appeal memorial. As regards "the erroneous application and interpretation of the substantive provisions of the criminal law", the appeal must specify clearly the errors which are alleged to have been made in the contested judgment (judgments nos. 234/1968, 459/1987, 1366/1987 (Nomiko Vima 1987, p. 1659) and 1454/1987, as well as the judgment given by the Court of Cassation in the present case).

Finally, supplementary submissions may be taken into account only if the initial appeal memorial sets out at least one ground which is found to be admissible and sufficiently substantiated (judgments nos. 242/1951, 341/1952, 248/1958, 472/1970, 892/1974, 758/1979 (Nomiko Vima 1980, p. 56), 647/1983, 1438/1986 and 1453/1987).

PROCEEDINGS BEFORE THE COMMISSION

27. Mr Hadjianastassiou applied to the Commission on 17 December 1986. He relied on Article 6 (art. 6), complaining that the lack of reasons in the judgment of the Courts-Martial Appeal Court and the shortness of the time-limit for appealing had prevented him from further substantiating his appeal to the Court of Cassation. He maintained in addition that his conviction for the disclosure of military secrets of secondary importance had infringed his right to freedom of expression guaranteed under Article 10 (art. 10).

28. The Commission declared the application (no. 12945/87) admissible on 4 October 1990. In its report of 6 June 1991 (made under Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 paras. 1 and 3 (b) (art. 6-1, art. 6-3-b), but not of Article 10 (art. 10).

The full text of the Commission's opinion is reproduced as an annex to this judgment*.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 (art. 6)

29. Mr Hadjianastassiou relied on paragraphs 1 and 3 (b) of Article 6 (art. 6-1, art. 6-3-b), which are worded as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> ..."

He complained of the failure to give reasons in the judgment read out on 22 November 1985 by the President of the Courts-Martial Appeal Court and the shortness of the time-limit for appealing to the Court of Cassation.

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* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 252 of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

Despite being present at the hearing, he had not discovered the precise reasons for his conviction until 10 January 1986, which had meant that his appeal on points of law had been bound to fail.

30. The Government contested this view, to which the Commission subscribed in substance. In the former's opinion, the applicant had been aware of the content of the questions put by the President of the Courts-Martial Appeal Court. Questions nos. 2 and 4 had been based on arguments put forward by Mr Hadjianastassiou himself in the Permanent Air Force Court. The reply to question no. 3, which had been formulated for the first time on appeal, was given expressly in the judgment read out by the President. As regards the question concerning the communication of information of "military importance", the President had divided it into two parts - 1 (a) and 1 (b) (see paragraph 11 above) - in order to take into account the conclusions of the experts and to show leniency to the accused, whose sentence had moreover been reduced. In addition, the questions, far from marking the conclusion of the court's deliberations, had given rise to keen argument during the trial. In short, it had been entirely possible for Mr Hadjianastassiou to submit detailed and admissible grounds for appeal within the statutory time-limit.

31. As the requirements of paragraph 3 of Article 6 (art. 6-3) constitute specific aspects of the right to a fair trial, guaranteed under paragraph 1 (art. 6-1), the Court will examine the complaint under both provisions taken together.

32. The Court notes at the outset that although Article 93 para. 3 of the Greek Constitution (see paragraph 22 above) requires all court judgments to be specifically and thoroughly reasoned, under Article 96 para. 5 the application of this requirement to the military courts is subject to the adoption of a special law. Such a law has still to be enacted. In the meantime the Court of Cassation can review the proper application of the criminal law by those courts only through the questions put by the presidents and the replies given by their colleagues, from which the reasoning is elicited.

33. The Contracting States enjoy considerable freedom in the choice of the appropriate means to ensure that their judicial systems comply with the requirements of Article 6 (art. 6). The national courts must, however, indicate with sufficient clarity the grounds on which they based their decision. It is this, inter alia, which makes it possible for the accused to exercise usefully the rights of appeal available to him. The Court's task is to consider whether the method adopted in this respect has led in a given case to results which are compatible with the Convention.

34. In this instance the judgment read out by the President of the Courts-Martial Appeal Court contained no mention of the questions as they appeared in the record of the hearing (see paragraphs 11 and 18 above). Admittedly it referred to Article 366 et seq. of the Military Criminal Code

(see paragraph 24 above) and described the information communicated as of minor importance, but it was not based on the same grounds as the decision of the Permanent Air Force Court. Question 1 (a), dealing with the communication of "general information concerning the guided missile" which had to be kept secret, appeared for the first time in the proceedings before the appeal court. When, the day after the delivery of the judgment, the applicant sought to obtain the full text of the questions, the registrar allegedly informed him that he would have to wait for the "finalised version" of the judgment (see paragraph 15 above). In his appeal on points of law, filed within the five-day time-limit laid down in Article 425 para. 1 of the Military Criminal Code (see paragraph 24 above), Mr Hadjianastassiou could rely only on what he had been able to hear or gather during the hearing and could do no more than refer generally to Article 426.

35. In the Government's contention, the applicant could have made further submissions by means of an additional memorial, pursuant to Article 509 para. 2 of the Code of Criminal Procedure (see paragraph 25 above); if he had not availed himself of this possibility, it had been because he had had no ground for appeal to put forward.

36. The Court is not persuaded by this argument. When Mr Hadjianastassiou received the record of the hearing, on 10 January 1986, he was barred from expanding upon his appeal on points of law. According to a consistent line of cases, additional submissions may be taken into account only if the initial appeal sets out at least one ground which is found to be admissible and sufficiently substantiated (see paragraph 26 above).

37. In conclusion, the rights of the defence were subject to such restrictions that the applicant did not have the benefit of a fair trial. There has therefore been a violation of paragraph 3 (b) of Article 6, taken in conjunction with paragraph 1 (art. 6-3-b, art. 6-1).

II. ALLEGED VIOLATION OF ARTICLE 10 (art. 10)

38. In Mr Hadjianastassiou's submission, his conviction by the military courts also infringed Article 10 (art. 10), which provides 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 ...
>
> 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."

39. It should be recalled that the applicant, a serving officer, was convicted and sentenced for having disclosed military information of minor importance. The study in question was intended for communication to a private arms manufacturing company for a fee.

Of course, the freedom of expression guaranteed by Article 10 (art. 10) applies to servicemen just as it does to other persons within the jurisdiction of the Contracting States (see the Engel and Others v. the Netherlands judgment of 8 June 1976, Series A no. 22, p. 41, para. 100). Moreover information of the type in question does not fall outside the scope of Article 10 (art. 10), which is not restricted to certain categories of information, ideas or forms of expression (see the markt intern Verlag GmbH and Klaus Beermann v. Germany judgment of 20 November 1989, Series A no. 165, p. 17, para. 26).

40. Accordingly, the sentence imposed by the Permanent Air Force Court, then reduced by the Courts-Martial Appeal Court (see paragraphs 7 and 13 above), constituted an interference with the exercise of the applicant's right to the freedom of expression. Such interference infringes Article 10 (art. 10) unless it was "prescribed by law", pursued one or more of the legitimate aims set out in paragraph 2 (art. 10-2) and was "necessary in a democratic society" in order to attain the aforesaid aims.

A. Was the interference "prescribed by law"?

41. According to Mr Hadjianastassiou, the first of these conditions was not satisfied because the "law" was not sufficiently foreseeable. The application by the Courts-Martial Appeal Court of Articles 97 and 98 of the Military Criminal Code had been erroneous (see paragraph 21 above); although these provisions had served as the basis for that court's decision, it had not mentioned any specific secret data that had been transferred to ELFON.

42. The Court notes, however, that the wording of the provisions in question (see paragraph 21 above) was not incompatible with the manner in which the Courts-Martial Appeal Court interpreted and applied them. Pointing out that it is primarily for the national courts to interpret and apply domestic law (see, among other authorities, the Kruslin v. France judgment of 24 April 1990, Series A no. 176-A, p. 21, para. 29), the Court finds, like the Government and the Commission, that the interference was "prescribed by law".

B. Did the interference pursue a legitimate aim?

43. Clearly the contested sentence was intended to punish the disclosure of information on an arms project classified as secret, and therefore to

protect "national security", a legitimate aim for the purposes of Article 10 para. 2 (art. 10-2).

C. Was the interference "necessary in a democratic society"?

44. Mr Hadjianastassiou denied that the interference was necessary. He argued that a routine technical study based entirely on his own documentation could not be regarded as damaging to national security. By its reply to question 1 (b) (see paragraphs 11 and 12 above), the Courts-Martial Appeal Court had acknowledged the lack of any relationship between the study effected for the air force and that for ELFON. In his view, there should have been regulations prohibiting serving Greek officers from working for private undertakings or allowing them to do so provided that they did not divulge military secrets; the Courts-Martial Appeal Court had not identified a single such secret divulged by him.

45. In this instance the project for the manufacture of a guided missile undertaken by the air force was classified as a "military secret". The applicant’s conviction in the appeal court was, however, based on the disclosure of "general information" which military interests required to be kept secret; the experts appointed by the appeal court had concluded prior to its decision that, although the two studies had employed different methods, none the less "some transfer of technical knowledge [had] inevitably occurred" (see paragraph 9 above).

Like the Government, the Court takes the view that the disclosure of the State’s interest in a given weapon and that of the corresponding technical knowledge, which may give some indication of the state of progress in its manufacture, are capable of causing considerable damage to national security.

46. It is also necessary to take into account the special conditions attaching to military life and the specific "duties" and "responsibilities" incumbent on the members of the armed forces (see the Engel and Others judgment, cited above, p. 41, para. 100). The applicant, as the officer at the K.E.T.A. in charge of an experimental missile programme, was bound by an obligation of discretion in relation to anything concerning the performance of his duties.

47. In the light of these considerations, the Greek military courts cannot be said to have overstepped the limits of the margin of appreciation which is to be left to the domestic authorities in matters of national security. Nor does the evidence disclose the lack of a reasonable relationship of proportionality between the means employed and the legitimate aim pursued.

In conclusion, no violation of Article 10 (art. 10) has been established.

III. APPLICATION OF ARTICLE 50 (art. 50)

48. According to Article 50 (art. 50),

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

Under this provision Mr Hadjianastassiou claimed the reimbursement of his costs and expenses incurred first in the Greek courts (650,000 drachmas), and then before the Convention organs (300,000 drachmas and 29,260 French francs).

The Government considered these claims to be excessive, because they far exceeded the fee scales applicable to the legal profession as laid down by Greek law. They stated that they were willing to pay 100,000 drachmas in the event of a finding of a violation.

49. The Court observes that it is not bound in this context by domestic scales or criteria (see, inter alia, the Granger v. the United Kingdom judgment of 28 March 1990, Series A no. 174, p. 20, para. 55).

Like the Commission, it takes the view that, for the costs incurred in Greece, only those referable to the Court of Cassation proceedings - 220,000 drachmas - can be reimbursed. The sums claimed in respect of the Strasbourg proceedings are consistent with the criteria laid down in the case-law and should therefore be awarded in their entirety.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of paragraphs 1 and 3 (b) of Article 6, taken together (art. 6-1, art. 6-3-b);

2. Holds that there has been no violation of Article 10 (art. 10);

3. Holds that the respondent State is to pay to the applicant, within three months, for costs and expenses, 29,260 (twenty-nine thousand two hundred and sixty) French francs and 520,000 (five hundred and twenty thousand) drachmas;

4. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 16 December 1992.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the concurring opinion of Mr De Meyer is annexed to this judgment.

R. R.
M.-A. E.

CONCURRING OPINION OF JUDGE DE MEYER

(*Translation*)

Like the other members of the Chamber I take the view that there has not been a breach of the right to freedom of expression in this case, but my reasons are simpler than those set out in paragraphs 39 to 47 of the judgment. They are as follows:

1. The applicant was convicted and sentenced under Article 97 para. 2 of the Military Criminal Code[1] for having disclosed secret information of minor importance[2].

2. Because the members of the armed forces have special "duties and responsibilities", they must of necessity be barred from communicating to third parties, unless duly authorised to do so, information and ideas of the kind in issue in the present case, even if such ideas and information are the fruit of their own work.

This is particularly the case where the information and ideas in question have been classified as secret by the competent authorities.

3. Where military personnel are found to have contravened this prohibition, it is for the courts within whose jurisdiction they fall to apply to them the penalties laid down by law.

4. In the present case it has not been shown that, in their treatment of the applicant, the Greek courts misused the powers vested in them in this sphere.

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[1] See paragraph 21 of the judgment.
[2] See paragraph 13 of the judgment.