

# EUROPEAN COURT

## FINAL JUDGMENTS ON RELIGIOUS FREEDOM ISSUES 1964-2001

Sara Vann, *Human Rights Without Frontiers*

**1964**

### ***Grandrath v. Federal Republic of Germany***

#### ***Application No. 2299/64***

Albert Grandrath, a Jehovah's Witness, refused to serve in the military or in substitute service on account of his religious beliefs. Upon classification as a conscientious objector, the Federal Minister for Labor ordered him to participate in substitute service. Grandrath requested a complete exemption, which the Minister denied. After his refusal to serve, criminal proceedings commenced against him, culminating with his conviction for desertion by the District Court at Dusseldorf. The court sentenced him to eight months imprisonment.

In his application to the European Court of Human Rights, Grandrath expressly invoked Article 9 of the Convention. The Commission also considered Article 4 and 14 of the Convention, *ex officio*. He maintained that the detention of Jehovah's Witnesses as criminals was not justified under Article 9 of the Convention. He also charged that Germany's policy of granting total exemptions to ministers of other faiths but not to Jehovah's Witness' ministers was discriminatory. As a minister, Grandrath maintained that the religious life of the Dusseldorf community of Jehovah's Witnesses would be hindered if he was required to submit to compulsory substitute service. The Minister for Labor required applicants for a ministerial exemption to prove their function was equal to that of an ordained minister of Roman Catholics and that their principal occupation was their ministry. Due to the financial status of Jehovah's Witnesses, their ministers must work secularly in addition to their religious obligations. Therefore, they did not qualify for the ministerial exemption.

The European Court of Human Rights unanimously held that there had been no violation of Articles 9, 14 taken in conjunction with 9, or 14 taken in conjunction with 4 of the Convention. While issuing different explanations for their decisions, all of the justices agreed that compulsory substitute service would not interfere with Grandrath's private and personal practice of religion and that the nature of substitute service would leave him sufficient time to perform his religious duties within his community.

*Note: Grandrath v. The Federal Republic of is not available on the website of the European Court of Human Rights, but can be accessed in the 1964 Yearbook of the European Convention on Human Rights.*

**1976**

***Kjeldson, Buck Madsen & Pederson v. Denmark -- Sex education at school***

***Application No. 5095/71***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=606142126&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights held by six votes to one that there was no breach of Article 2 of Protocol No. 1 or of Article 14 of the Convention taken together with Article 2. Further, it held unanimously that Articles 8 and 9 had not been violated taken together with Article 2 of Protocol No. 1.

The Kjeldson, Buck Madsen, and Pedersen parents all objected to the compulsory sex education taught to their children at public schools throughout Denmark. After failing to obtain exemptions for their children, they considered enrollment in private school and requested the government reimburse them for their expenses.

All the applicants maintained that integrated, and hence compulsory, sex education, as introduced into State schools by the 1970 Act, was contrary to the beliefs they hold as Christian parents and constituted a violation of Article 2 of Protocol No. 1.

In interpreting Article 2 of Protocol No. 1, the Court remarked that the Article constituted a whole that was dominated by its first sentence. "By binding themselves not to "deny the right to education", the Contracting States guaranteed to anyone within their jurisdiction "a right of access to educational institutions existing at a given time" and "the possibility of drawing", by "official recognition of the studies which he has completed ...profit from the education received." Upon examining the legislation in dispute, the Court found the school's program made no attempt at indoctrination, or at advocating a specific kind of sexual behaviour. It also remarked that the legislation did not affect the right of parents to enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents' own religious or philosophical convictions. The Court finally pointed out that the parents had the alternative of sending their children to private education or educating them at home. Therefore, the Court did not find the legislation requiring compulsory sex education in public schools to offend Article 2 of Protocol No. 1.

**1978**

***Arrowsmith v. United Kingdom – Religious pacifism***

***Application No. 7050/75***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=603134125&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights unanimously held that there had been no violation of Articles 5 and 9 of the Convention, and by a vote of 11 to 1 that there had been no infringement upon the applicant's Article 10 right to freedom of expression.

In 1934, Great Britain enacted the Disaffection Act, in which section 1 criminalized one who "endeavors to seduce any member of Her Majesty's forces from his duty and section 2 criminalizes the possession of "any documents of such a nature that the dissemination of copies thereof among members of Her Majesty's forces" with the intent of successfully causing one to disaffect.

Pat Arrowsmith distributed leaflets to troops stationed at an army camp urging them to desert or to refuse to obey orders if they were posted to Northern Ireland. Consequently, she was arrested and convicted for violating the Disaffection Act. She claimed her conviction violated Article 9 of the Convention, maintaining that the dissemination of the leaflet was a moral imperative flowing from her life-long commitment to the pacifist cause. She described her actions as being "necessarily incidental to her freedom of thought and conscience and to her freedom to manifest her belief, in teaching, practice and observance."

The Commission agreed that Arrowsmith's pacifism fell within the ambit of the right to freedom of thought and conscience, however it concluded that not every act motivated by a religious belief is covered by Article 9 (1). The Commission held that since the leaflets she distributed did not manifest her pacifist belief, Article 9 § 1 had not been infringed.

**1990**

### ***Darby v. Sweden – Church tax***

#### ***Application No. 11581/85***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=604161703&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights unanimously held that there had been a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1, but that it was not necessary to examine the case under Article 9 of the Convention taken either alone or together with the said Article 14.

The Lutheran Church of Sweden is the established religion in Sweden. Under the transitional provisions of the 1974 Constitution (regeringsformen), its parishes have a status similar to that of municipalities - including the right of taxation. In 1951, Sweden enacted the Dissenters Tax Act, which, along with the Freedom of Religion Act, was aimed at securing better respect for freedom of religion. The Dissenters Tax Act provided for a reduction in the Church tax for residents of Sweden who were not members of the Church.

Peter Darby, a Finnish citizen, lived and worked in Sweden during the week and lived with his family in Finland on the weekends. Although he was not a member of the Swedish Church, he had to pay the full tax because as a non-resident he was not eligible for the reduction.

The European Court of Human Rights found that to distinguish between residents and non-residents in awarding the reduction in the Church tax constituted a violation of Article 14 of the Convention in connection with Protocol No. 1. These provisions secured enjoyment of rights and freedoms without discrimination on any ground, including religion. The Court found that the tax was discriminatory because there was no legitimate aim in distinguishing in treatment between residents and non-residents in providing for a tax reduction. It did not find it necessary to examine whether there had also been an Article 9 violation.

**1993**

## **Kokkinakis v. Greece**

### ***– Freedom of religious expression***

#### ***Application No. 14307/88***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=2&Action=Html&X=604114335&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights held by six votes to three that there had been a breach of Article 9, by eight votes to one that there had been no breach of Article 7, and unanimously decided that it was unnecessary to examine the case under Article 10 or under Article 14 taken together with Article 9.

At the end of the 1930's, Dictator Metaxas enacted what became known as the Laws of Necessity, no. 1363/1938 and 1672/1939, but the parliament did not vote on them because Metaxas had suspended its activities. These laws criminalized proselytism, which was defined as, "any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion (eterodoxos), with the aim of undermining those beliefs, either by any kind of inducement or promise of an inducement or moral support or material assistance, or by fraudulent means or by taking advantage of his inexperience, trust, need, low intellect or naïvety."

Minos Kokkinakis, a Jehovah's Witness, was arrested and convicted for violating this law more than 60 times from 1936 onward. Even after democracy in Greece was restored in 1975, Article 13 of Greece's Constitution of 1975 expressly prohibited proselytism and Greek authorities arrested 4,400 Jehovah's Witnesses from 1975 to 1992, and of 1,233 whose cases went to trial, 208 were convicted.

The European Court of Human Rights found that Kokkinakis' conviction violated Article 9 of the European Convention of Human Rights. Article 9, section 2 provides for freedom to manifest one's religion or beliefs, 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 Commission commented that the right to try to convince one's neighbor of one's religion was included in principle in Article 9. Without such teaching, the provision in Article 9 for freedom to change one's religion would in effect become a "dead letter." Therefore, the Greek government was ordered to pay Kokkinakis 400,00 drachmas (\$1,300 US) in non-pecuniary damages and 2,789,500 drachmas (\$9,300 US) in legal costs and expenses.

Although finding a violation of Article 9 as applied to the conviction of Mr. Kokkinakis, the Court declined to find the proselytism law unconstitutional on its face. Concurring Judge Pettiti criticised the criterion that the Greek law imposed for finding convictions as unverifiable—"respectable or not respectable' and 'misplaced' cannot

guarantee legal certainty. Proselytism is linked to freedom of religion; a believer must be able to communicate his faith and his beliefs in the religious sphere as in the philosophical sphere. Freedom of religion and conscience certainly entails accepting proselytism, even where it is 'not respectable'."

Dissenting Judge Valticos of Greece disagreed that proselytism should be included under freedom of religion. He remarked that, "in the case of this sect, therefore, what is involved is indeed a systematic attempt at conversion, and consequently an attack on the religious beliefs of others. That has nothing to do with Article 9, which is designed solely to protect the religion of individuals and not their right to attack that of others."

## **Hoffman v. Austria**

– *Child custody and cults*

***Application No. 00012875/87***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=1&Action=Html&X=604154928&Nnotice=0&Nnoticemode=&RelatedMode=0>

The European Court of Human Rights held by five votes to four that there has been a violation of Article 8 in conjunction with Article 14, unanimously that it is unnecessary to rule on the allegation of a violation of Article 8 taken alone, that no separate issue arises under Article 9, either taken alone or in conjunction with Article 14, and that it was not necessary to rule on the allegation of a violation of Article 2 of Protocol No. 1.

Mr. S. and Mrs. Hoffman were married as Roman Catholics, and both of their two children were baptized Roman Catholics. During their marriage, Mrs. Hoffman converted to the Jehovah's Witness faith. Shortly thereafter, Mrs. Hoffman initiated divorce proceedings against her husband. Both applied for custody of their two children. Mr S. submitted that if the children were left in the applicant's care, there was a risk that they would be brought up in a way that would do them harm on account of Mrs. Hoffman's religious beliefs. Among his charges were that Jehovah's Witnesses were hostile to society, by discouraging "all intercourse with non-members, all expressions of patriotism, and religious tolerance."

The Supreme Court of Austria, overturning the lower court's decision to award her full custody, refused Mrs. Hoffman her parental rights after divorce on account of her membership as a Jehovah's Witness. The European Court of Human Rights found that the decision constituted an interference with the mother's right to respect for her family life. The Court allowed that courts may take such factors as rejection of public holidays, refusal of blood transfusions, and position of a social minority into account when awarding custody. However since the Supreme Court of Austria had introduced the Federal Act on the Religious Education of Children in making its custody decision, this constituted a difference in treatment on the ground of religion. Differences in treatment based on religion are only tolerated when there is a reasonable relationship between the means employed and the legitimate aim pursued. While the Court agreed that the aim the Supreme Court pursued was legitimate, that of the protection of the health and rights of the children, a distinction based solely on a difference in religion was not acceptable because there was no reasonable relationship or proportionality between the means employed and the aim pursued. The Court found a violation of Article 8 taken in conjunction with Article 14 by a vote of 5 to 4. The Court unanimously found no separate issue arising under Article 9 and that there was no need to consider the complaint.

Four Judges filed separate dissenting opinions. Judge Matscher argued that the only criterion upon which the court should have based the decision was on the welfare of the child. He considered that taking into consideration the certain consequences which belonging to the Jehovah's Witness religion might entail for the well-being of the children to be "wholly legitimate." Judge Valticos (from Greece) also felt the Supreme Court's consideration of Mrs. Hoffman's religious beliefs resulted from a legitimate concern to protect the future of the children, who he feared would become the objects of their mothers proselytizing goal. He raised the issue that the right of parents to proselytize their children should not be included within the parents' rights to freedom of religion.

**1994**

***Otto-Preminger Institut v. Austria***

***-- Freedom of expression and religious hate speech***

### ***Application No. 13470/87***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=7&Action=Html&X=617110633&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights held by a vote of six to three that there had not been a violation of Article 10 of the Convention.

The applicant institute attempted to show a film that offended the Catholic religion and the religious feelings in the region of Tyrol, where a large majority of Catholics reside. The authorities banned the screening of the film and confiscated the film.

The applicant argued that the authorities action violated its Article 10 guarantee of freedom of expression. This case represented a conflict between freedom of expression and the government's efforts to protect the religious beliefs of others.

The Court remarked that while those who exercise their freedom to manifest their religion "cannot reasonably expect to be exempt of all criticism," the manner in which religious beliefs are opposed is a matter which may engage the responsibility of the State. It explained that the state's action is justified most when it is exercising its responsibility to ensure the peaceful enjoyment of the right guaranteed under Article 9 to the holders of the religious beliefs under attack. It remarked, "Indeed, in extreme cases the effect of particular methods of opposing or denying religious beliefs can be such as to inhibit those who hold such beliefs from exercising their freedom to hold and express them."

In the Court's assessment, Austrian Courts had not overstepped their margin of appreciation. The authorities had been entitled to act to prevent what might be perceived as "unwarranted and offensive attacks on the religious beliefs of the overwhelming majority of religious believers in Tyrol." Therefore, under these circumstances, the authorities did not violate Article 10.

The joint dissenting opinion of three judges argued that the need for repressive action amounting to complete prevention of the exercise of freedom of expression should only be accepted "if the behaviour concerned reaches so high a level of abuse, and comes so close to a denial of the freedom of religion of others, as to forfeit for itself the right to be tolerated by society." Because the film was to be shown to a limited audience who would have been forewarned of the critical contents of the film, the dissent concluded that the applicant association had acted responsibly in such a way as to limit, as far as it could reasonably have been expected to, the possible harmful effects of showing the film.

**1996**

### ***Wingrove v. United Kingdom***

***– Freedom of expression and religious hate speech***

### ***Application No. 17419/90***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=12&Action=Html&X=617111704&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights held by seven votes to two that there had been no violation of Article 10.

Mr. Wingrove filmed a video portraying the crucified Christ in acts of a sexual nature with a nun. The British Authorities refused to grant a distribution certificate because it determined the video violated British blasphemy laws.

Mr. Wingrove argued that the refusal of a classification certificate for his video work "Visions of Ecstasy" was in breach of his freedom of expression. The Court had to decide the extent to which the interference with freedom of expression may be justified to protect the religious beliefs of others.

The Court first noted that, while blasphemy laws are in force in European countries, the application of these laws was "exceedingly rare" and that strong arguments advancing the abolishment of them existed. However, it refused to conclude whether the imposition of blasphemy laws was unnecessary in a democratic society because the legal and social systems in the countries composing the European Union did not contain "sufficient common ground." Instead, the Court examined whether there existed a balance of proportionality between the manner in which the anti-religious sentiment was expressed and the state's repressive measures.

The Court viewed the interference with the free expression of Mr. Wingrove resulting from the law of blasphemy was in furtherance of "the protection of the rights of others . . . It is also fully consonant with the aim of the protections afforded by Article 9 to religious freedom." While the state's action resulted in a complete ban on the film's distribution, this was an "understandable consequence of the opinion of the competent authorities that the distribution of the video would infringe the criminal law and of the refusal of the applicant to amend or cut out the objectionable sequences." Therefore, the authorities did not overstep their margin of appreciation and did not violate Article 10.

The dissenting opinions maintained that the prior restraint on Mr. Wingrove's expression was not "necessary in a democratic society" and further criticized the distinctions made by the majority when applying the doctrine of the state's margin of appreciation. It remarked that it was difficult to ascertain what principles determine the scope of that margin of appreciation, which is wide in some cases and limited in others.

***Manoussakis & Others v. Greece***  
***-- Freedom of worship***

***Application No. 18748/91***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=3&Action=Html&X=604114335&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights held unanimously that there had been a violation of Article 9.

Greek law no. 1363/1938 subjected the use of "any building open to the public for the purpose of divine worship" to prior authorization of both ecclesiastical authorities, i.e. the Greek Orthodox Church, and the Ministry of Education and Religious Affairs.

Mr. Manoussakis rented a private room for use by members of the Jehovah's Witness faith. He lodged an application in 1983 with the Minister of Education and Religious Affairs requesting authorization to use the room as a place of worship. When the application process was delayed, the Witnesses began to use the room for worship without the proper authorization. The Witnesses were prosecuted under Law no. 1368/1983 in 1986.

The European Court of Human Rights found that the obligation to seek authorization to establish a place of worship, contradicted Articles 11 and 13 of the Greek Constitution and Articles 9 and 11 of the European

Convention. It remarked that the extensive case-law in Greece seemed to show a "clear tendency on the part of the administrative and ecclesiastical authorities to use these provisions to restrict the activities of faiths outside the Orthodox Church." Therefore, it subjected the law to strict scrutiny. Although the government pursued a legitimate aim, that of the protection of public order, application of the law directly affected the applicants' freedom of religion disproportionately to the legitimate aim pursued. Consequently, the Court found that the law was not "necessary in a democratic society" and awarded Manoussakis the equivalent of \$13,400 for costs and expenses.

### **Valsamis v. Greece**

#### ***-- Compulsory participation of Jehovah's Witness youths in military commemoration***

#### ***Application No. 21787/93***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=6&Action=Html&X=604153307&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights held by seven votes to two that there had not been a breach of Article 2 of Protocol No. 1 and had not been a breach of Article 9 of the Convention, unanimously that there had not been a breach of Article 3, and that there has been a breach of Article 13 of the Convention taken together with Article 2 of Protocol No. 1 and Article 9 of the Convention, but not taken together with Article 3 of the Convention.

Ms. Valsamis, a Jehovah's Witness youth, was suspended from school for refusing to participate in a school parade celebrating a military event. She based her refusal on her religious convictions.

Ms. Valsamis asserted that Article 9 guaranteed her the right to the negative freedom not to manifest, by gestures of support, any convictions or opinions contrary to her own. Moreover, she disputed both the necessity and the proportionality of the school's interference, that the suspension was too serious, causing her to be stigmatized and marginalized from her classmates.

The Court held that the suspension for refusing to participate in a parade did not amount to an interference with her right to freedom of religion.

Ms. Valsamis and her parents also complained of a breach of Article 13 of the Convention, which provides: "Everyone whose rights and freedoms as set forth in this 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." She and her parents asserted that they had no effective remedy available to them for submitting their complaints and having the disciplinary penalty set aside.

The Court reiterated that Article 13 "secures to anyone claiming on arguable grounds to be the victim of a violation of his rights and freedoms as protected in the Convention an effective remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress." The Court thus found that the applicants did not have an effective remedy before a national authority in order to raise the complaints they later submitted at Strasbourg. There consequently had been a breach of Article 13 of the Convention taken together with Article 2 of Protocol No. 1 and Article 9 of the Convention.

### **Efstratiou v. Greece – Compulsory participation of Jehovah's Witness youths in military commemoration**



## ***Application No. 24095/94***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=5&Action=Html&X=604154928&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights held by seven votes to two that there had neither been a breach of Article 2 of Protocol No. 1 nor Article 9 of the Convention.

Ms. Efstratiou, a Jehovah's Witness youth, also refused to participate in a school parade commemorating a military event, basing her refusals on religious beliefs. She explained to the school authorities that pacifism was a fundamental tenet of her religion and forbid any conduct or practice associated with war or violence, even indirectly. The teachers' committee at her school punished her for her failure to attend with two days' suspension from school.

Ms. Efstratiou's parents alleged that Article 2 of Protocol No. 1 had been violated, which provides for the right of the parents to ensure their child's education conforms with their own religious and philosophical convictions. Ms. Efstratiou also claimed that her suspension violated Article 9 of the Convention.

The Court expressed its surprise "that pupils can be required on pain of suspension from school - even if only for two days - to parade outside the school precincts on a holiday." That being so, it discerned nothing that could offend the applicants' pacifist convictions to an extent prohibited by the second sentence of Article 2 of Protocol No. 1.

The Court, as in the Penditis case, noted at the outset that Ms. Efstratiou was exempted from religious education and the Orthodox Mass, as she had requested on the grounds of her own religious beliefs. It decided, therefore, that the suspension did not amount to an interference with her right to freedom of religion either. Two dissenting judges would have found a violation of Article 9.

**1997**

## ***Tsirlis v. Greece***

***– Conscientious Objection***

## ***Application No. 19234/91***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=604114335&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights held unanimously that there had been a violation of Article 5 para. 1 of the Convention, Article 5 para. 5 and that it was not necessary to examine whether there had been a violation of Article 9, either taken alone or in conjunction with Article 14 of the Convention.

Section 6 of Greece's Law no. 1763/1988 ("the 1988 Law"), grants a right of military service exemption to all ministers of "known religions". While the Supreme Administrative Court had held that Jehovah's Witnesses were a "known religion" (judgments nos. 2105 and 2106/1975, 4635/1977, 2484/1980, 4620/1985 and 790 and 3533/1986), administrative boards repeatedly refused their ministers exemption under the 1988 Law on the grounds that Jehovah's Witnesses were not a known religion. However, in its judgment no. 3601/1990, the Supreme Administrative Court expressly upheld the right of Jehovah's Witness' ministers of religion to be exempted from military service.

Prior to 1990, Mr. Tsirlis and Mr. Kouloumpas both applied to their respective Recruitment Offices for exemption from military service as religious ministers. Both their offices denied the exemption on the grounds that Jehovah's Witnesses were not a known religion and ordered them to report for duty. While they reported, both refused to join their units and to wear military uniforms. They objected because they felt they should have been exempted as ministers of a known religion. They were found guilty of insubordination and imprisoned awaiting appeal.

Following a finding of the Supreme Administrative Court that Tsirlis and Kouloumpas should have been awarded an exemption as members of a known religion, the Military Court of Appeals overturned their convictions for insubordination. However, it also found in each case no obligation to pay compensatory damages for the period they were detained, because the detention was due to their "own gross negligence."

The European Court of Human Rights found that the detention of Tsirlis and Kouloumpas was unlawful, violating Article 5, paragraph 1 of the European Convention. The Court held the detention was arbitrary, with no basis in domestic law, in light of the fact that Greece's 1988 Law had provided all ministers of known religions the right to be exempted from military service. It further held that the refusal to compensate Tsirlis and Kouloumpas for the unlawful detention violated Article 5, paragraph 5 and hence awarded Tsirlis \$30,000 and Kouloumpas \$27,600 for damages and costs.

### **Georgiadis v. Greece**

#### ***– Conscientious Objection***

#### ***Application No. 21522/93***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=7&Action=Html&X=603161650&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights held unanimously that there had been a violation of Article 6 para. 1 of the Convention and that it was not necessary to examine the applicant's complaint under Article 13 of the Convention.

Mr. Anastasios Georgiadis applied for an exemption from military service as a minister of a known religion, Jehovah's Witnesses, pursuant to Greece's aforementioned 1988 law. He was denied the exemption and ordered to report for military service. Like Tsirlis and Kouloumpas, he reported but refused to be inducted and was found guilty of insubordination by a military tribunal. While the Military Court of Appeals overturned the conviction, it found that Georgiadis was not entitled to compensation because his detention was due to his own "gross negligence." The court issued its ruling before Georgiadis had been given the opportunity to submit its arguments.

The European Court of Human Rights found that the Military Court of Appeals' action violated Article 6, paragraph 1 of the European Convention. Article 6, paragraph 1 entitles individuals to a fair and public hearing in determination of their civil rights. The Court held that a procedure whereby civil rights were determined without ever hearing the parties' submissions could not be considered to be compatible with Article 6 para. 1. It further found the military tribunal violated Article 6 para. 1 by providing an inadequate reason for its decision by mere reference to gross negligence, a concept which involved an assessment of questions of fact. Georgiadis was therefore awarded \$2,500 for costs and expenses.

### **Kalaç v. Turkey**

#### ***– Freedom of religious expression for the military***

## ***Application No. 20704/92***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=611122852&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights unanimously held that there had been no breach of Article 9 of the Convention.

Mr. Faruk Kalaç, a Turkish citizen born in 1939, pursued a career

as judge advocate in the air force. In 1990 he was serving, with the

rank of group captain, as the high command's director of legal affairs. In 1990, the Supreme Military Council ordered his compulsory retirement, making the specific criticism that Mr. Kalaç's "conduct and attitude revealed that he had adopted unlawful fundamentalist opinions."

Relying on Article 9 of the Convention, Mr. Kalaç submitted that he had been removed from his post as judge advocate on account of his religious

convictions. In response the government produced documents showing that he had given a group, which the Government considered dangerous, legal assistance, had taken part in training sessions and had intervened on a number of occasions in the appointment of servicemen who were members of the so-called 'sect.'

The Court emphasized that Article 9 does not protect every act motivated or inspired by a religion or belief and that in exercising his freedom to manifest his religion, an individual may need to take his specific situation into account. It concluded that the Supreme Military Council's order was not based on Captain Kalaç's religious opinions and beliefs or the way he had performed his religious duties, but on his conduct and attitude, that "breached military discipline and infringed the principle of secularism." Accordingly, it concluded that Captain Kalaç's compulsory retirement did not amount to an interference with the right guaranteed by Article 9 since it was not prompted by the way the applicant manifested his religion.

## ***The Canea Catholic Church v. Greece***

### ***– Denial of access to the courts of the Catholic Church***

## ***Application No. 143/1996/762/96***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=7&Action=Html&X=606141237&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights decided unanimously that there had been a violation of Article 6 § 1 of the Convention.

In 1988, the Canea Catholic Church brought an action against the owner of adjoining property for demolishing a wall surrounding part of the church. Although the district court ruled in favor of the church, the appellate court held that the church did not have the legal personality required by Greek legislation for participating in legal proceedings. The church had been established in Greece since the formation of the Greek State in 1830. The Church claimed that the removal of its right to participate in legal proceedings had been based exclusively on the criterion of religion. The European Court of Human Rights found that Greece violated Article 6 §1 of the Convention by failing to secure access to its courts. The Court

considered that it was unnecessary to decide the church's argument that Greece violated its Article 9 rights, taken together with Article 14.

**1998**

**Larissis and Others v. Greece**

*-- Freedom of religious expression for the military*

***Application No. 23372/94***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=8&Action=Html&X=618120045&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights held by eight votes to one that there had been no violation of Articles 7 and 9 of the Convention with regard to the measures taken against the first, second and third applicants for the proselytising of airmen Antoniadis and Kokkalis; held seven votes to two that there had been a violation of Article 9 with regard to the measures taken against the second and third applicants for the proselytising of the civilians.

The applicants, three officers of the Greek Air Force and followers of the Pentecostal Church, were charged with offences of proselytism under section 4 of Law no. 1363/1938, which criminalizes any attempt to intrude "on the religious beliefs of a person of a different religious persuasion, with the aim of undermining those beliefs, either by any kind of inducement or moral support or material assistance, or by fraudulent means or by taking advantage of the other person's inexperience, trust, need, low intellect or naivety." The three officers spoke to airmen serving under them concerning the teachings of the Pentecostal Church, as well as to civilians.

The applicants argued that the Greek law against proselytism was not clearly defined, and, as applied to them, constituted an unjustified interference with their right to exercise their religious freedom. The European Court of Human Rights ruled eight votes to one that Greece had not violated Article 9 of the Convention by punishing the applicants for proselytizing the airmen. The Court also ruled seven votes to two that Greece had violated Article 9 of the Convention by punishing the applicants for proselytizing civilians. The Court acknowledged that punishing the applicants for proselytism interfered with the exercise of their rights to freedom to manifest their religion. However, the law was adequately prescribed, pursued the legitimate aim of protecting the rights and freedoms of others, and, with regard to the attempt to convert airmen, was necessary in a democratic society. The Court emphasized that religious freedom did not include the right to engage in "improper proselytism," such as the offering of material or social advantage or the application of improper pressure with a view to gaining new members for a Church. Because of the influence of military hierarchical structures, the Court felt Greece was justified in protecting subordinate members from abuses of power. However, the Court also held that it was not necessary in a democratic society to afford special protection to the civilians, who were not subject to the same pressures and constraints as the subordinates in the army, at the expense of the applicants' rights to manifest their religion.

**1999**

***Buscarini and Others v. San Marino – Refusal to take religious oath***

## ***Application No. 24645/94***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=606120106&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights decided unanimously that San Marino had violated Article 9 of the Convention.

Mr. Buscarini, Mr Della Balda, and Mr Manzaroli won election to the Grand General Council of San Marino. The required oath of office to be taken by members of the Republic's Parliament includes a reference to the "Holy Gospels." They objected to the reference, citing Article 4 of the Declaration of Rights of 1974, which secured the right to freedom of religion, as well as Article 9 of the Convention. The Council, however, required them to take the oath, including the reference to the Gospels, on pain of losing their seats. They complied under duress.

Mr. Buscarini, Mr Della Balda, and Mr Manzaroli complained of an infringement of their right to freedom of religion and conscience. Mr Buscarini and Mr Della Balda submitted that the obligation which the General Grand Council imposed on them on 26 July 1993 demonstrated that in the Republic of San Marino at the material time the exercise of a fundamental political right, such as holding parliamentary office, was subject to publicly professing a particular faith, in breach of Article 9.

The Court reiterated that enshrined in Article 9 was the principle that freedom of religion is one of the foundations of a 'democratic society' within the meaning of the Convention. "It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism in dissociable from a democratic society, which has been dearly won over the centuries, depends on it." Applying Article 9 to the case at hand, the Court found that requiring Mr Buscarini and Mr Della Balda to take an oath on the Gospels constituted a limitation within the meaning of the second paragraph of Article 9, since it required them to swear allegiance to a particular religion on pain of forfeiting their parliamentary seats. The compulsory oath violated Article 9 because it was not necessary in a democratic society. It explained that "it would be contradictory to make the exercise of a mandate intended to represent different views of society within Parliament subject to a prior declaration of commitment to a particular set of beliefs." It did not consider whether the aim of the government in implementing the oath, that of the need to "preserve public order, in the form of social cohesion and the citizens' trust in their traditional institutions," was legitimate.

## ***Serif v. Greece***

*– State interference in internal affairs of the Muslim community*

## ***Application No. 38178/97***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=11&Action=Html&X=606120935&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights held unanimously that there had been a violation of Article 9 of the Convention.

Mr. Serif, a theological school graduate, was convicted for having usurped the functions of a minister of a "known religion" and for having publicly worn the dress of such a minister without having the right to do so under Articles 175 and 176 of the Greek Criminal Code.

Mr. Serif maintained that the office of the mufti "represented the free manifestation of the Muslim religion", and that the Muslim community had the right under the Treaty of Peace of Athens of 1913 to elect its muftis. Therefore, he claimed his conviction violated Articles 9 and 14 of the Convention. He further argued that his conviction amounted to an interference with his right to be free to exercise his religion together with all those who turned to him for spiritual guidance.

The Court noted that the actions for which Mr. Serif was convicted included issuing a message about the religious significance of a feast, delivering a speech at a religious gathering, and appearing in public wearing the dress of a religious leader. In these circumstances, the Court considered that the applicant's conviction amounted to an interference with his right under Article 9 § 1 of the Convention, "in community with others and in public ... to manifest his religion ... in worship [and] teaching." The Government argued that the interference served a legitimate purpose. By protecting the authority of the lawful mufti, the domestic courts sought to preserve order in the particular religious community and in society at large. They also sought to protect the international relations of the country, an area over which States exercise unlimited discretion.

While the Court accepted that the interference in question pursued a legitimate aim under Article 9 § 2 of the Convention, namely "to protect public order," it noted that the conviction was not "necessary in a democratic society." It remarked that any restriction on freedom of religion must correspond to a "pressing social need" and be "proportionate to the legitimate aim pursued." The Court did not view that punishing a person for merely acting as the religious leader of a group that willingly followed him "compatible with the demands of religious pluralism in a democratic society." Moreover, it felt that it was not necessary in democratic societies for the State to take measures to ensure that religious communities remain or are brought under a unified leadership. Therefore, the Court found a violation of Article 9 of the Convention.

**2000**

### **Case of Hasan and Chaush v. Bulgaria**

*– State interference in internal affairs of the Muslim community*

*Application No. 30985/96*

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=606121150&N otice=0&N oticemode=&RelatedMode=0>

The European Court of Human Rights unanimously held that Bulgaria violated Article 9 of the Convention.

Mr. Fikri Sali Hasan became the Chief Mufti of Bulgarian Muslims in 1992. Mr. Ismail Ahmed Chaush was formerly a teacher at the Islamic Institute in Sofia. The Directorate of Religious Denominations in Bulgaria registered the new leadership of Mr. Hasan as Chief Mufti in 1992. However, his predecessor, Mr. Nedim Grendzhev claimed that he was still the Chief Mufti, which led to continuous contention as to the true leadership of the Muslims in Bulgaria. In 1995, the Directorate issued decisions awarding the leadership of the Muslim community to Mr. Grendzhev. The new leadership brought private security guards to the premises of the Chief Mufti's Office in Sofia, forcibly evicted the staff working there, and occupied the building. The applicants submitted that the police, who arrived after the surprise action, immediately stepped in to protect the new occupants of the building.

The applicants complained that the replacement of the leadership of the Muslim religious community in Bulgaria in 1995 and the ensuing events up to October 1997 had given rise to a violation of their rights under Article 9 of the Convention by interfering with their right to govern their own affairs and choose their leadership.

The Court recalled that religious communities traditionally and universally exist in the form of organized structures and that the personality of the religious ministers was undoubtedly of importance to every member of the community. It noted that participation in the life of the religious community is considered part of manifesting one's religion, protected by Article 9 of the Convention. Therefore, where the organization of the religious community is at issue, the Court interprets Article 9 in conjunction with Article 11 of the Convention, which safeguards associative life against unjustified State interference. Seen in this perspective, the Court remarked that "the believer's right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully free from arbitrary State intervention." Consequently, state action favoring one leader of a divided religious community or undertaken with the purpose of forcing the community to come together under a single leadership against its own wishes would likewise constitute an interference with freedom of religion. It recalled that *Serif v. Greece* had demonstrated that in democratic societies the State does not need to take measures to ensure that religious communities are brought under a unified leadership. Therefore it found an interference with the internal organization of the Muslim religious community and with the applicants' right to freedom of religion as protected by Article 9 of the Convention. There was a violation of Article 9 because the interference was not "prescribed by law" in that it was arbitrary and was based on legal provisions which allowed an unfettered discretion to the executive and did not meet the required standards of clarity and foreseeability.

### **Cha'are Shalom Ve Tsedek v. France**

*-- Orthodox Jews and ritual slaughter*

*Application No. 27417/95*

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=1&Action=Html&X=603124513&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights held by a vote of 12 to 5 that there had been no violation of Article 9.

Cha'are Shalom ve Tsudek is a Jewish liturgical association, which adheres to the religious belief that meat is not kosher unless it is "glatt," a special qualification requiring the slaughtered animal to be free of any kind of impurity, particularly in its lungs. The association asked the Minister of Interior to submit a proposal to the Minister of Agriculture to recommend that this group be given the official approval it needed in order to perform the ritual slaughter. The Council of State only exempts approved religious bodies from the obligation to stun animals before slaughter. The Council of State refused to consider the applicant organization a religious body.

The organization complained that the refusal of its application for approval restricted its ability to manifest its religion through observance. Further, it argued that it was the victim of discrimination because the approval it sought was only granted to the Paris Central Consistory, the group representing the majority of Jews in France, whose performance of ritual slaughter was not as strict as the applicants' methods.

The Court said there would only be interference with the freedom to manifest one's religion if the illegality of performing the stricter ritual slaughter made it impossible for "ultra-orthodox" Jews to eat meat from animals slaughtered in accordance with the religious prescriptions they considered applicable. However, since the group could obtain the meat from Belgium, and also some butchers in Paris, their right to manifest their religion had not been hindered.

### **Thilimmenos v. Greece**

***–Conscientious Objection and discrimination Application No. 34369/97***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=12&Action=Html&X=618141629&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights unanimously held that Greece had violated Article 14 in connection with Article 9, as well as violated Article 6 § 1.

In 1983, Mr. Thilimmenos, a Jehovah's Witness, was convicted for insubordination for refusing to enlist in the army for religious reasons. In 1989, the executive board of the Greek chartered accountants' body refused to appoint him as a chartered accountant because he had a criminal record, even though he passed the relevant qualifying exam.

Mr. Thilimmenos argued that refusing him appointment to a post of chartered accountant was directly linked to the manifestation of his religious beliefs and fell within the ambit of Article 9 of the Convention. He pointed out in this connection that he had not been appointed because he had refused to serve in the armed forces; by refusing to do so, he had manifested his religious beliefs as a Jehovah's Witness. The applicant further argued that it could not serve any useful purpose to exclude someone from the profession of chartered accountants for having refused to serve in the armed forces on religious grounds.

The Court held that the state had a legitimate interest to exclude some offenders from the profession of a chartered accountant. It further remarked that a conviction for refusing on religious grounds to wear a military uniform could not imply dishonesty, or other quality that would likely undermine the individual's ability to exercise the profession of accountant. The court felt it was disproportionate to impose further sanctions than the prison sentence the offender had already served for refusing to join the army. Since he was not unfit, there was no legitimate aim for refusing him the appointment. The Court held the state should have introduced appropriate exceptions to the rule barring persons convicted of a felony from the profession in order to guarantee the rights under Article 14 in connection with Article 9. The Court did not consider it necessary to examine whether there was a violation of Article 9 taken by itself.

**2001**

***Metropolitan Church of Bessarabia and Others v. Moldova***

***– Denial of registration of Metropolitan Church of Bessarabia by the State***

***Application No. 45701/99***

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=619152019&Notice=0&Noticemode=&RelatedMode=0>

The European Court of Human Rights held unanimously that there had been a violation of Articles 9 and 13 of the Convention and that it was not necessary to examine the case also from the standpoint of Article 14 taken together with Article 9 of the Convention.

The Moldovan authorities refused to recognize the Metropolitan Church of Bessarabia, which had split from the recognized Metropolitan Church of Moldova. The Supreme Court of Justice held that any state intervention into the conflict would make matters worse and upheld the authorities' decision not to recognize the applicant's church. As a result of not being recognized, the applicants could not be active inside Moldovan territory, nor obtain a legal personality. The applicants maintained that this constituted a



violation of their rights to freedom to manifest their religion, and also that they were a victim of discrimination based on religion since they were not entitled to judicial protection.

The Court held that the government's refusal to recognize the church interfered with the right of that church and other applicants' freedom of religion. While the interference pursued a legitimate aim, that of protecting public order and public safety, the Court held that in taking the view that the church was not a new denomination and in making its recognition depend on the will of a recognized ecclesiastical authority, it had treated this church differently than others for no reasonable justification. The consequences of refusing to recognize the religion were disproportionate to the legitimate aim and so it was not necessary in a democratic society. The authorities of Moldova therefore violated Article 9 by refusing to recognize the Church.