

Resolution ResDH(2005)88
concerning judgments of the European Court of Human Rights
concerning the conviction of Muslim leaders in violation of their freedom of religion:
- Serif against Greece, judgment of 14 December 1999 (final on 14 March 2000)
- Agga No. 2 against Greece, judgment of 17 October 2002 (final on 17 January 2003)

*(Adopted by the Committee of Ministers on 26 October 2005
at the 940th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms (referred to hereinafter as “the Convention”);

Having regard to the judgments of the European Court of Human Rights in the Serif and Agga No. 2 cases, rendered respectively on 14 December 1999 and 17 October 2002 and transmitted, once they had become final, to the Committee of Ministers under Articles 44 and 46 of the Convention;

Recalling that these cases originated in three applications (No 38178/97 in the Serif case, Nos 50776/99 and 52912/99 in the Agga case) lodged against Greece with the European Commission of Human Rights or the European Court on 29 September 1997, 31 August 1999 and 23 November 1999, under either former Article 25 or Article 34 of the Convention, by Mr Ibrahim Serif and Mr Mehmet Agga, both Greek nationals, and that the Court declared admissible the applicants' complaints relating to their criminal convictions for usurping the functions of Muslim Muftis and publicly wearing Muftis' official robes ;

Recalling that in these judgments the Court unanimously:

- held that there had been, in both cases, violations of Article 9 of the Convention on account of the criminal convictions of the applicants, both of whom had been elected as muftis by a part of the Greek Muslim community and who, having been convicted, were unable, in community with others and in public, to manifest their religion in worship and teaching;

- held that no separate issue was raised with regard to freedom of expression under Article 10 of the Convention;

- held that the respondent state had to pay Mr Serif, within three months from the date upon which the judgments became final, 2 700 000 drachmas for pecuniary and non-pecuniary damages and that simple interest at an annual rate of 6% should be payable from the expiry of the abovementioned three months until settlement; and dismissed the remainder of the former applicant's claims for just satisfaction;

- held, in the Agga case, that the finding of violation amounted in itself to adequate just satisfaction for the purposes of Article 41 of the Convention;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;

Whereas the Committee of Ministers invited the government of the respondent state to inform it of the measures taken following the judgments of the Court, having regard to Greece's obligation under Article 46 of the Convention to abide by them;

Whereas during the examination of these cases by the Committee of Ministers, the government of the respondent state gave the Committee information about the measures taken to grant the applicants full redress for the violations found (*restitutio in integrum*) and to prevent new violations of the same kind as those found in the present judgments; this information appears in the appendix to this resolution;

Having satisfied itself that on 15 June 2000, one day after the expiry of the time-limit set, the government of the respondent state had paid the applicant in the Serif case the sum provided in the judgment of 14 December 1999, and having taken note of the fact that the applicant has waived his right to default interest in view of the minimal sum involved;

Declares, after having taken note of the information supplied by the Greek government, that it has exercised its functions under Article 46 of the Convention in these cases.

Appendix to Resolution ResDH(2005)88

*Information provided by the Government of Greece
during the examination of the cases of Serif and Agga No. 2
by the Committee of Ministers*

I. Individual measures

As regards the Serif case, on 8 February 2002, the applicant introduced a request for reopening of the criminal proceedings by virtue of Article 525, paragraph 1(5), of the Code of Criminal Procedure as amended by Law 2865/2000 (Article 11). The request was upheld by the Thessaloniki Appeal Court Council on 24 April 2002 (decision No. 651/2002). As a result, the applicant's criminal conviction of 1996 by the Thessaloniki three-member Criminal Court, which was at the basis of the violation in the present case, was quashed and all its remaining effects automatically erased.

As regards the Agga case, the applicant was also entitled, under the Greek Code of Criminal Procedure, to initiate proceedings for the reopening of the first five sets of criminal proceedings which had led to his convictions. With regard to three other convictions in 1997 and 1998, they were reversed on appeal on 28 March 2001 by the three-member Criminal Court of Lamia, which expressly granted direct effect to the European Court's judgment in the Serif case. The Court held in particular that, by addressing religious messages to a group of people who voluntarily followed him as their religious leader, the applicant had not usurped the functions of a minister of a "known religion", but had simply exercised his right to manifest his religion, a right guaranteed by Article 9 of the Convention (decisions Nos. 1000/2001, 1001/2001 and 1002/2001).

II. General measures

The Court's judgments raised an issue of interpretation and application by domestic courts of Articles 175 and 176 of the Greek Criminal Code in cases of elected leaders of certain factions of the Muslim community in Greece.

The judgment of the European Court in the case of Serif has been translated into Greek, disseminated by the Ministry of Justice to all competent judicial authorities and published in the widely-read criminal law journal *Poiniki Dikaiosyni* 3/2000, 272-275. In addition, the translation of both judgments has been published on the site of the Greek State Legal Council, www.nsk.gr.

As a result, the impugned interpretation of Articles 175 and 176 of the Criminal Code was rapidly changed, as the domestic courts granted direct effect to the European Court's judgment in the Serif case (see the abovementioned decision of the Criminal Court of Lamia on 28 March 2001 and, subsequently, that of 24 April 2002 of the Thessaloniki Appeal Court).

The Greek Government considers that the measures adopted have both remedied the consequences of the violations found in these cases and will prevent new similar, violations in the future. Accordingly, Greece has complied with its obligations under Article 46, paragraph 1, of the Convention in the present cases.