v
SECOND SECTION

CASE OF SERIF v. GREECE

(Application no. 38178/97)

JUDGMENT

STRASBOURG

14 December 1999

FINAL

14/03/2000

[This judgment is subject to editorial revision before its reproduction in final form in the official reports of selected judgments and decisions of the Court.]

In the case of Serif v. Greece,
The European Court of Human Rights (Second Section), sitting as a Chamber composed of:
Mr M. FISCHBACH, *President*,[Note1]
Mr C. ROZAKIS,
Mr B. CONFORTI,
Mr P. LORENZEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A.B. BAKA,
Mr E. LEVITS, *Judges*
and Mr E. FRIBERGH, *Section Registrar*,
Having deliberated in private on 2 December 1999,
Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application against Greece lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Fundamental Rights and Freedoms ("the Convention") by a Greek national, Mr Ibraim Serif, on 29 September 1997. The application was registered on 9 October 1997 under file no. 38178/97. The applicant is represented by Mr Sempahedin Emin, a lawyer practising in Komotini, and Mr Tekin Akillioglu, a lawyer practising in Ankara and the Greek Government by their Agent, Mr Aristomenis Komissopoulos, President of the Legal Council of State (*Nomiko Simvulio tu Kratus*).

The applicant complained, *inter alia*, that his conviction for usurping the functions of a minister of a known religion and publicly wearing the uniform of such a minister amounted to a violation of his rights under Articles 9 and 10 of the Convention.

2. On 12 January 1998 the Commission decided to give notice of the application to the respondent Government and invited them to submit their observations on the merits.

The Government submitted their observations on 30 April 1998, to which the applicant replied on 3 July 1998.

3. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998 and in accordance with the provisions of Article 5 § 2 thereof, the case was transferred to the Court.

4. In accordance with Rule 52 § 1 of the Rules of Court the President of the Court, Mr L. Wildhaber, assigned the case to the Second Section. The Chamber constituted within the Section included *ex officio* Mr C. Rozakis, the judge elected in respect of Greece (Article 27 § 2 of the Convention and Rule 26 § 1 (a) of the Rules of Court), and Mr M. Fischbach, the Vice-President of the Section (Rules 13 and 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr B. Conforti, Mr P. Lorenzen, Mrs M. Tsatsa-Nikolovska, Mr A. Baka and Mr E. Levits (Rule 26 § 1 (b)).

5. On 17 November 1998, the Court decided to invite the parties to a hearing on admissibility and merits. The hearing took place on 26 January 1999.

The parties were represented as follows:

(a) *for the Government*

Mr G. KANELLOPOULOS, Senior Adviser,
Legal Council of the State, *Acting Agent*,
Mrs M. TELALIAN, Deputy Legal Adviser,
Ministry of Foreign Affairs,
Mr V. KYRIAZOPOULOS, Legal Assistant,
Legal Council of the State, *Advisers*;

(b) *for the applicant*

Mr T. AKILLIOGLU,
Mr S. EMIN, *Counsel*;

The applicant was also present.

6. On 26 January 1998 the Chamber declared admissible the applicant's complaints under Articles 9 and 10 of the Convention. It declared the remainder of the application inadmissible.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant is a Greek citizen, born in 1951. He is a theological school graduate and resides in Komotini.

A. The background of the case

8. In 1985 one of the two Moslem religious leaders of Thrace, the Mufti of Rodopi, died. The State appointed a Mufti *ad interim*. When he resigned, a second Mufti *ad interim*, Mr MT, was appointed. On 6 April 1990 the President of the Republic confirmed MT in the post of Mufti of Rodopi.

9. In December 1990, the two independent Moslem Members of Parliament for Xanthi and Rodopi requested the State to organise elections for the post of Mufti of Rodopi, as the law then in force provided. They also requested that elections be organised by the State for the post of the other Moslem religious leader of Thrace, the Mufti of Xanthi. Having received no reply, the two independent MPs decided to organise themselves elections at the mosques on Friday 28 December 1990 after the prayers.

10. On 24 December 1990 the President of the Republic, on the proposal of the Council of Ministers and under Article 44 § 1 of the Constitution, adopted a legislative act (*praxi nomothetiku periehomenu*) by which the manner of selection of the Muftis was changed.

11. On 28 December 1990 the applicant was elected Mufti of Rodopi by those attending Friday prayers at the mosques. Together with other Moslems he challenged the lawfulness of MT's appointment before the Council of State. These proceedings are still pending.

12. On 4 February 1991 Parliament enacted Law 1920 retroactively, thereby validating the act of 24 December 1990.

B. The criminal proceedings against the applicant

13. The public prosecutor of Rodopi instituted criminal proceedings against the applicant under Articles 175 and 176 of the Criminal Code for having usurped the functions of a minister of a "known religion" and for having publicly worn the uniform of such a minister without having the right to do so. On 8 November 1991 the Court of Cassation, considering that there might be disturbances in Rodopi, decided, under Articles 136 and 137 of the Code of Criminal Procedure, that the case should be heard in Thessaloniki.

14. On 5 March 1993 the public prosecutor of Thessaloniki summoned the applicant to appear before the single-member first instance criminal court (*monomeles plimmeliodikio*) of Thessaloniki to be tried for the offences provided for under Articles 175 and 176 of the Criminal Code.

15. The applicant was tried by the criminal court of Thessaloniki on 12 December 1994. He was legally represented. The court heard a number of prosecution and defence witnesses. Although one witness testified that the applicant had taken part in religious ceremonies, none of the witnesses testified that the applicant had purported to discharge the judicial functions that the Mufti was entrusted with by Greek law. Moreover, a number of witnesses testified that there did not exist an official uniform for the Muftis. However, one prosecution witness testified that, although in principle all Moslems were allowed to wear the black gown in which the applicant had been appearing, according to local custom this had become the privilege of the Mufti.

16. On 12 December 1994 the court found the applicant guilty of the offences provided for under Articles 175 and 176 of the Criminal Code. According to the court, these offences had been committed between 17 January 1991 and 28 February 1991, a period during which the applicant had discharged the entirety of the functions of the Mufti of Rodopi by officiating at wedding ceremonies, christening children, preaching and engaging in administrative activities. In particular, the court found that on 17 January 1991 the applicant had issued a message to his fellow Moslems about the religious significance of the Regaib Kandil feast thanking them at the same time for his election as Mufti. On 15 February 1991, in the capacity of a Mufti, he had attended the inauguration of the hall of the "Union of the Turkish Youth of Komitini" wearing clothes which, according to Moslem custom, only the Mufti was allowed to wear. On 27 February 1991 he had issued another message on the occasion of the Berat Kandil feast. Finally, on 28 February 1991 and in the same capacity he had attended a religious gathering of 2,000 Moslems at Dokos, a village in Rodopi, and had delivered the keynote speech. Moreover, the court found that the applicant had repeatedly worn the official uniform of the Mufti in public. The court imposed on the applicant a commutable sentence of eight months' imprisonment.

17. The applicant appealed. The hearing of his appeal before the three-member criminal court (*trimeles plimmeliodikio*) of Thessaloniki, sitting as a court of appeal, was adjourned on 24 May 1995 and 30 April 1996 because, *inter alia*, MT, the appointed Mufti, who had been called by the prosecution, did not appear to testify. MT was fined. The appeal was heard on 21 October 1996. In a decision issued on the same date the court upheld the applicant's conviction and imposed on him a sentence of six months' imprisonment to be commuted to a fine.

18. The applicant paid the fine and appealed in cassation. He submitted, *inter alia*, that the court of appeal had interpreted Article 175 of the Criminal Code erroneously when it considered that the offence could be committed even in circumstances when a person claimed to be a minister of a "known religion" without, however, discharging any of the functions of the minister's office. Moreover, the court was wrong in ignoring expert testimony that there did not exist an official Mufti uniform. The applicant had the right under Article 10 of the Convention to make the statements for which he had been convicted. "The office of the Mufti represented the free manifestation of the Moslem religion", the Moslem community had the right under the Treaty of Peace of Athens of 1913 to elect its Muftis and, therefore, his conviction violated Articles 9 and 14 of the Convention.

19. On 2 April 1997 the Court of Cassation rejected the applicant's appeal. It considered that the offence in Article 175 of the Criminal Code was committed "when somebody appeared as a minister of a known religion and when he discharged the functions of the minister's office including any of the administrative functions pertaining thereto". The Court considered that the applicant had committed this offence because he behaved and appeared as the Mufti of Rodopi wearing the uniform which, in people's minds, belonged to the Mufti. In particular, the Court referred to the incidents of 17 January 1991, 15 February 1991, 27 February 1991 and 28 February 1991. The Court of Cassation did not specifically address the applicant's arguments under Articles 9, 10 and 14 of the Convention.

II. RELEVANT LAW AND PRACTICE

A. International treaties

20. Article 11 of the Treaty of Peace of Athens between Greece and others, on the one hand, and the Ottoman Empire, on the other, which was concluded on 17 May 1913 and ratified by the Greek Parliament by a law published in the Official Gazette on 14 November 1913, provides as follows:

(original)

" La vie, les biens, l'honneur, la religion et les coutumes de ceux des habitants des localités cédées à la Grèce qui resteront sous l'administration hellénique seront scrupuleusement respectés.

Ils jouiront entièrement des mêmes droits civils et politiques que les sujets hellènes d'origine. La liberté, la pratique extérieure du culte seront assurées aux Musulmans.

...

Aucune atteinte ne pourra être portée à l'autonomie et à l'organisation hiérarchique des communautés musulmanes existantes ou qui pourraient se former, ni à l'administration des fonds et immeubles qui leur appartiennent.

...

Les Muftis, chacun dans sa circonscription, seront élus par les électeurs musulmans.

...

Les Muftis, outre leur compétence sur les affaires purement religieuses et leur surveillance sur l'administration des biens Vacoufs, exerceront leur juridiction entre musulmans en matière de mariage, divorce, pensions alimentaires (néfaca), tutelle, curatelle, émancipation de mineurs, testaments islamiques et successions au poste de Mutévelli (Tévliét).

Les jugements rendus par les Muftis seront mis à exécution par les autorités helléniques compétentes.

Quant aux successions, les parties Musulmanes intéressées pourront, après accord préalable, avoir recours au mufti, en qualité d'arbitre. Contre le jugement arbitral ainsi rendu toutes les voies de recours devant les tribunaux du pays seront admises, à moins d'une clause contraire expressément stipulée. "

21. On 10 August 1920 Greece concluded two treaties with the principal Allied Powers in Sèvres. By the first treaty the Allied powers transferred to Greece all the rights and titles which they had acquired over Thrace by virtue of the Peace Treaty they had signed with Bulgaria at Neuilly-sur-Seine on 27 November 1919. The second treaty concerned the protection of minorities in Greece. Article 14 § 1 of the second treaty provides as follows:

"Greece agrees to take all necessary measures in relation to the Moslems to enable questions of family law and personal status to be regulated in accordance with Moslem usage."

22. On 30 January 1923 Greece and Turkey signed a treaty for the exchange of populations. On 24 July 1923 Greece and others, on the one hand, and Turkey, on the other, signed the Treaty of Peace of Lausanne. Articles 42 and 45 of this treaty give the Moslem minority of Greece the same protection as Article 14 § 1 of the Treaty for the Protection of Minorities of Sèvres. On the same day Greece signed a Protocol with the principal Allied Powers bringing into force the two treaties concluded in Sèvres on 10 August 1920. The Greek Parliament ratified the three above-mentioned treaties by a law published in the Official Gazette on 25 August 1923

23. In its decision No. 1723/80 the Court of Cassation considered that it was obliged to apply Islamic law in certain disputes between Moslems by virtue of the Treaty of Peace of Athens of 1913, the Treaty for the Protection of Minorities of Sèvres of 1920 and the Treaty of Peace of Lausanne of 1923.

B. The legislation on the Muftis

24. Law 2345/1920 provided that the Muftis, in addition to their religious functions, had competence to adjudicate on family and inheritance disputes between Moslems to the extent that these disputes are governed by Islamic law. It also provided that the Muftis were directly elected by the Moslems who had the right to vote in the national elections and who resided in the Prefectures in which the Muftis would serve. The elections were to be organised by the State and theological school graduates had the right to be candidates. Article 6 § 8 of the law provided for the promulgation of a royal decree to make detailed arrangements for the elections of the Muftis.

25. Such a decree was never promulgated. The State appointed a Mufti in Rodopi in 1920 and another one in March 1935. In June 1935 a Mufti *ad interim* was appointed by the State. In the course of the same year the State appointed a regular Mufti. This Mufti was replaced by another in 1941 when Bulgaria occupied Thrace. He was re-appointed by the Greek State in 1944. In 1948 the Greek authorities appointed a Mufti *ad interim* until 1949 when a regular Mufti was appointed. The latter served until 1985 when he died.

26. Under the legislative act of 24 December 1990 the functions and qualifications of the Muftis remain largely unchanged. However, provision is made for the appointment of the Muftis by presidential decree following a proposal by the Minister of Education who, in his turn, must consult a committee composed of the local Prefect (*nomarhis*) and a number of Moslem dignitaries chosen by the State. The act expressly abrogates law 2345/1920. In the act it is envisaged that it should be ratified by law in accordance with Article 44 § 1 of the Constitution.

27. Law 1920/1991 retroactively validated the legislative act of 24 December 1990.

C. Legislative acts under Article 44 § 1 of the Constitution

28. Article 44 § 1 of the Constitution provides as follows:

> "In exceptional circumstances, when an extremely urgent and unforeseeable need arises, the President of the Republic may, on the proposal of the Council of Ministers, adopt legislative acts. These acts must be submitted to Parliament for approval ... within forty days ... ."

D. Articles 175 and 176 of the Criminal Code

29. Article 175 of the Criminal Code provides as follows:

> "1. A person who intentionally usurps the functions of a State or municipal official is punished with imprisonment up to a year or a fine.
>
> 2. This provision also applies when a person usurps the functions of a lawyer or a minister of the Greek Orthodox Church or another known religion."

30. The Court of Cassation has considered that this provision applies in the case of a former priest of the Greek Orthodox Church who continues to wear the priest robes (decision No. 378/80). The priest in question was defrocked after he joined the Old Calendarists, a religious movement formed by Greek Orthodox priests who wanted the Church to maintain the Julian calendar. In decision No. 454/66 the Court of Cassation considered that the offence in Article 175 of the Criminal Code is also committed by a person who purports to discharge the administrative functions of a priest. In decisions Nos. 140/64 and 476/71 the Court of Cassation applied Article 175 of the Code to cases of persons who had purported to exercise the religious functions of an Orthodox priest by conducting services, christening children etc.

31. Article 176 of the Criminal Code provides as follows:

> "A person who publicly wears the uniform or the insignia of a State or municipal official or of a religious minister of those referred to in Article 175 § 2 without having the right to do so ... is punished with imprisonment up to six months or a fine."

E. The legislation on ministers of "known religions"

32. Ministers of the Greek Orthodox Church and other "known" religions enjoy a number of privileges under domestic law. Inter alia, the religious weddings they celebrate produce the same legal effects as civil weddings and they are exempt from military service.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

33. The applicant complained that his conviction amounted to a violation of Article 9 of the Convention, which provides as follows:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

34. The Government denied that there had been any breach. In their view, there had been no interference with the applicant's right to freedom of religion. Even if there had been an interference, the Government argued that it would have been justified under the second paragraph of Article 9 of the Convention.

35. The Court must consider whether the applicant's Article 9 rights were interfered with and, if so, whether such interference was "prescribed by law", pursued a legitimate aim and was "necessary in a democratic society" within the meaning of Article 9 § 2 of the Convention.

A. Interference

36. The applicant 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.

37. The Government submitted that there had been no interference with the applicant's right to freedom of religion because Article 9 of the Convention did not guarantee for the applicant the right to impose on others his understanding as to Greece's obligations under the Treaty of Peace of Athens.

38. The Court recalls that, while religious freedom is primarily a matter of individual conscience, it also includes, *inter alia*, freedom, in community with others and in public, to manifest one's religion in worship and teaching (see, *mutatis mutandis*, Eur. Court HR, the Kokkinakis v. Greece judgment of 25 May 1993, Series A no. 260-A, p. 17, § 31).

39. The Court further recalls the applicant was convicted for having usurped the functions of a minister of a "known religion" and for having publicly worn the uniform of such a minister without having the right to do so. The facts underlying the applicant's conviction, as they transpire from the relevant domestic court decisions, were issuing a message about the religious significance of a feast, delivering a speech at a religious gathering, issuing another message on the occasion of a religious holiday and appearing in the clothes of a religious leader. In these circumstances, the Court considers that the applicant's conviction amounts 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".

B. "Prescribed by law"

40. The Government submitted that the applicant's conviction was provided by law, namely Articles 175 and 176 of the Criminal Code. Given the manner in which these provisions had been interpreted by the courts, the outcome of the proceedings against the applicant was foreseeable. In the Government's view, the issue of whether the applicant's conviction was prescribed by law was not related to Law 2345 on the election of the Muftis or the Treaty of Peace of Athens. In any event, the Government argued that Law 2345 had fallen into desuetude. Moreover, the provisions of the Treaty of Peace of Athens, which had been concluded when Thrace was not part of Greece, became devoid of purpose after the compulsory exchange of populations in 1923. This was when Greece exchanged all the Moslems who were living on the territories in its possession when the Treaty of Peace of Athens had been concluded. In the alternative, the Government argued that the provisions of the Treaty of Peace of Athens had been superseded by the provisions of the Treaty of Sèvres for the Protection of Minorities in Greece and the Treaty of Peace of Lausanne and these treaties made no provision for the election of the Muftis.

41. The applicant disagreed. He considered that the Treaty of Peace of Athens remained in force. The Greek Prime-Minister had accepted that at the Diplomatic Conference leading to the 1923 Treaty of Peace of Lausanne. Moreover, the Court of Cassation had confirmed the continued validity of the Treaty of Peace of Athens and legal scholars held the same view. The Moslems had never accepted the abrogation of Law 2345.

42. The Court does not consider it necessary to rule on the question whether the interference in issue was "prescribed by law" because, in any event, it is incompatible with Article 9 on other grounds (see Eur. Court HR, the Manoussakis and Others v. Greece judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1362, § 38).

C. Legitimate aim

43. 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.
44. The applicant disagreed.
45. The Court accepts that the interference in question pursued a legitimate aim under Article 9 § 2 of the Convention, namely "to protect public order". The Court notes in this connection that the applicant was not the only person claiming to be the religious leader of the local Moslem community. On 6 April 1990 the authorities had appointed another person as Mufti of Rodopi and the relevant decision had been challenged before the Council of State.

D. "Necessary in a democratic society"

46. The Government submitted that the interference was necessary in a democratic society. In many countries, the Muftis were appointed by the State. Moreover, Muftis exercised important judicial functions in Greece and judges could not be elected by the people. As a result, the appointment of the Mufti by the State could not in itself raise an issue under Article 9.

47. Moreover, the Government submitted that the Court of Cassation had not convicted the applicant simply because he had appeared as the Mufti. The court considered that the offence in Article 175 was committed when somebody actually discharged the functions of a religious minister. The court also considered that the acts that the applicant engaged in fell within the administrative functions of a Mufti in the broad sense of the term. Given that there were two Muftis in Rodopi at the time, the courts had to convict the spurious one in order not to create tension among the Moslems, between the Moslems and Christians and between Turkey and Greece. The applicant had questioned the legality of the acts of the lawful Mufti. In any event, the State had to protect the office of the Mufti and, even if there had not existed a lawfully appointed Mufti, the applicant would have had to be punished. Finally, the "election" of the applicant had been flawed because it had not been the result of a democratic procedure and the applicant had been used by the local Moslem MP for party political purposes.

48. The applicant considered that his conviction was not necessary in a democratic society. He pointed out that the Christians and Jews in Greece had the right to elect their religious leaders. Depriving the Moslems of this possibility amounted to discriminatory treatment. The applicant further contended that the vast majority of Moslems in Thrace wanted him to be their Mufti. Such an interference could not be justified in a democratic society where the State should not interfere with individual choices in the field of personal conscience. His conviction was just one aspect of the policy of repression applied by the Greek State vis-à-vis the Turkish-Moslem minority of Western Thrace.

49. The Court recalls that freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. It is true that in a democratic society it may be necessary to place restrictions on freedom of religion to reconcile the interests of the various religious groups (see the above-mentioned Kokkinakis v. Greece judgment, op. cit., pp. 17 and 18, §§ 31 and 33). However, any such restriction must correspond to a "pressing social need" and must be "proportionate to the legitimate aim pursued" (see, among others, Eur. Court HR, the Wingrove v. the United Kingdom judgment of 25 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1956, § 53).

50. The Court also recalls that the applicant was convicted under Articles 175 and 176 of the Criminal Code, which render criminal offences certain acts against ministers of "known religions". The Court notes in this connection that, although Article 9 of the Convention does not require States to give legal effect to religious weddings and religious courts' decisions, under Greece law weddings celebrated by ministers of "known religions" are assimilated to civil ones and the Muftis have competence to adjudicate on certain family and inheritance disputes between Moslems. In such circumstances, it could be argued that it is in the

public interest for the State to take special measures in order to protect those whose legal relationships can be affected by the acts of religious ministers from deceit. However, the Court does not consider it necessary to decide on this issue, which does not arise in the applicant's case.

51. The Court notes in this connection that, despite a vague assertion that the applicant had officiated at wedding ceremonies and engaged in administrative activities, the domestic courts that convicted the applicant did not mention in their decisions any specific acts by the applicant with a view to producing legal effects. The domestic courts convicted the applicant on the following established facts: issuing a message about the religious significance of a feast, delivering a speech at a religious gathering, issuing another message on the occasion of a religious holiday and appearing in the clothes of a religious leader. Moreover, it has not been disputed that the applicant had the support of at least a part of the Moslem community in Rodopi. However, in the Court's view, punishing a person for the mere fact that he acted as the religious leader of a group that willingly followed him can hardly be considered compatible with the demands of religious pluralism in a democratic society.

52. The Court is not oblivious of the fact that in Rodopi there existed, in addition to the applicant, an officially appointed Mufti. Moreover, the Government argued that the applicant's conviction was necessary in a democratic society because his actions undermined the system put in place by the State for the organisation of the religious life of the Moslem community in the region. However, the Court recalls that there is no indication that the applicant attempted at any time to exercise the judicial and administrative functions for which the legislation on the Muftis and other ministers of "known religions" makes provision. As for the rest, the Court does not consider that, in democratic societies, the State needs to take measures to ensure that religious communities remain or are brought under a unified leadership.

53. It is true that the Government argued that, in the particular circumstances of the case, the authorities had to intervene in order to avoid the creation of tension among the Moslems in Rodopi and between the Moslems and the Christians of the area as well as Greece and Turkey. Although the Court recognises that it is possible that tension is created in situations where a religious or any other community becomes divided, it considers that this is one of the unavoidable consequences of pluralism. The role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other (see, *mutatis mutandis*, Eur. Court HR, Plattform "Ärzte für das Leben" v. Austria judgment of 21 June 1988, Series A no. 139, p. 13, § 32). In this connection, the Court notes that, apart from a general reference to the creation of tension, the Government did not make any allusion to disturbances among the Moslems in Rodopi that had actually been or could have been caused by the existence of two religious leaders. Moreover, the Court considers that nothing was adduced that could warrant qualifying the risk of tension between the Moslems and Christians or between Greece and Turkey as anything more than a very remote possibility.

54. In the light of all the above, the Court considers that it has not been shown that the applicant's conviction under Articles 175 and 176 of the Criminal Code was justified in the circumstances of the case by "a pressing social need". As a result, the interference with the applicant's right, in community with others and in public, to manifest his religion in worship and teaching was not "necessary in a democratic society for the protection of public order" under Article 9 § 2 of the Convention. There has, therefore, been a violation of Article 9 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

55. The applicant complained that, since he was convicted for certain statements that he had made and for appearing in certain clothes, there was also a violation of Article 10 of the Convention, 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."

56. The Government argued that there had been no violation because the applicant had not been punished for expressing certain views but for usurping the functions of a Mufti.

57. Given its finding that there was a violation of Article 9 of the Convention, the Court does not consider it necessary to examine whether Article 10 was also violated.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damages

59. The applicant claimed repayment of the fine he had paid as a result of his conviction, which was approximately GRD 700,000. He also claimed GRD 10,000,000 for non-pecuniary damage.
60. The Government did not accept these claims.
61. The Court recalls its finding that the applicant's conviction amounted to a violation of Article 9 of the Convention. It, therefore, awards the applicant as compensation for pecuniary damage the equivalent of the fine that he had had to pay, namely GRD 700,000. The Court further considers that, as a result of the above violation, the applicant suffered non-pecuniary damage for which the finding in this judgment does not afford sufficient satisfaction. Making its assessment on an equitable basis, the Court awards the applicant a sum of GRD 2,000,000 in this respect.

B. Costs and expenses

62. The applicant did not make any claims in respect of costs and expenses.
63. The Court, having regard to the above and to the fact that the applicant had the benefit of legal aid in the proceedings before it, does not consider it appropriate to make an award in this connection.

C. Default interest

64. According to the information available to the Court, the statutory rate of interest applicable in Greece at the date of adoption of the present judgment is 6% per annum.

FOR THESE REASONS THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 9 of the Convention;

2. *Holds* that no separate issue arises under Article 10 of the Convention;

3. *Holds* that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final pursuant to Article 44 § 2 of the Convention, 2,700,000 (two million seven hundred thousand) Greek drachmas for damages and that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English and delivered at a public hearing in the Human Rights Building, Strasbourg, on 14 December 1999.

Erik FRIBERGH Marc FISCHBACH
Registrar President

[Note1] Judge's names are to be followed by a line return (Shift+Return).