

**CASE OF THLIMMENOS v. GREECE**

(Application no. 34369/97)

JUDGMENT

STRASBOURG

6 April 2000

**In the case of Thlimmenos v. Greece,**

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,

Mrs E. PALM,

Mr L. FERRARI BRAVO,

Mr L. CAFLISCH,

Mr J.-P. COSTA,

Mr W. FUHRMANN,

Mr K. JUNGWIERT,

Mr M. FISCHBACH,

Mr B. ZUPANČIČ,

Mrs N. VAJIĆ,

Mr J. HEDIGAN,

Mrs W. THOMASSEN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr T. PANȚÎRU,

Mr E. LEVITS,

Mr K. TRAJA,

Mr G. KOUMANTOS, *ad hoc judge*,

and also of Mrs M. DE BOER-BUQUICCHIO, *Deputy Registrar*,

Having deliberated in private on 1 December 1999 and 15 March 2000,

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

## PROCEDURE

1. The case was referred to the Court, in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")<sup>[1]</sup>, by the European Commission of Human Rights ("the Commission") on 22 March 1999 (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention).

2. The case originated in an application (no. 34369/97) against the Hellenic Republic lodged with the Commission under former Article 25 of the Convention by a Greek national, Mr Iakovos Thlimmenos ("the applicant"), on 18 December 1996. The applicant alleged that the refusal of the authorities to appoint him to a post of chartered accountant on account of his criminal conviction for disobeying, because of his religious beliefs, the order to wear the military uniform was in breach of Articles 9 and 14 of the Convention and that the proceedings he had instituted in the Supreme Administrative Court in this connection were not conducted in accordance with Article 6 § 1 of the Convention. In his observations submitted on 20 October 1997 in reply to the observations of the Greek Government ("the Government") on the admissibility and merits of the case, he also complained of a violation of Article 1 of Protocol No. 1.

3. The Commission declared the application partly admissible on 12 January 1998. In its report of 4 December 1998 (former Article 31 of the Convention), it expressed the opinion that there had been a violation of Article 9 of the Convention taken in conjunction with Article 14 (twenty-two votes to six); that it was not necessary to examine whether there had been a violation of Article 9 taken on its own (twenty-one votes to seven); and that there had been a violation of Article 6 § 1 (unanimously)<sup>[2]</sup>.

4. On 31 March 1999 the panel of the Grand Chamber determined that the case should be decided by the Grand Chamber (Rule 100 § 1 of the Rules of Court). Mr C. Rozakis, the judge elected in respect of Greece, who had taken part in the Commission's examination of the case, withdrew from sitting in the Grand Chamber (Rule 28). The Government accordingly appointed Mr G. Koumantos to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

5. The applicant and the Government each filed a memorial.

6. A hearing took place in public in the Human Rights Building, Strasbourg, on 1 December 1999. There appeared before the Court:

(a) *for the Government*

Mr P. GEORGAKOPOULOS, Legal Adviser,  
State Legal Council, *Delegate of the Agent*,  
Mr K. GEORGIADIS, Legal Assistant,  
State Legal Council, *Counsel*;

(b) *for the applicant*

Mr N. ALIVIZATOS, of the Athens Bar, *Counsel*.

The Court heard addresses by Mr Alivizatos and Mr Georgiadis.

## AS TO THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

#### A. The applicant's conviction for insubordination

7. On 9 December 1983 the Athens Permanent Army Tribunal (*Diarkes Stratodikio*), composed of one career military judge and four other officers, convicted the applicant, a Jehovah's Witness, of insubordination for having refused to wear the military uniform at a time of general mobilisation. However, the tribunal considered under Article 70 (b) of the Military Criminal Code and under Article 84 § 2 (a) of the Criminal Code that there were extenuating circumstances and sentenced the applicant to four years' imprisonment. The applicant was released on parole after two years and one day.

#### B. The refusal to appoint the applicant to a chartered accountant's post

8. In June 1988 the applicant sat a public examination for the appointment of twelve chartered accountants, a liberal profession in Greece. He came second among sixty candidates. However, on 8 February 1989 the Executive Board of the Greek Institute of Chartered Accountants (hereinafter "the Board") refused to appoint him on the ground that he had been convicted of a felony (*kakuryima*).

### **C. The proceedings before the Supreme Administrative Court**

9. On 8 May 1989 the applicant seized the Supreme Administrative Court (*Simvulio Epikratias*) invoking, *inter alia*, his right to freedom of religion and equality before the law, as guaranteed by the Constitution and the Convention. The applicant also claimed that he had not been convicted of a felony but of a less serious crime.

10. On 18 April 1991 the Third Chamber of the Supreme Administrative Court held a hearing. On 25 May 1991 it decided to refer the case to the plenary court because of the important issues it raised. The Chamber's own view was that Article 10 of Legislative Decree no. 3329/1955 provided that a person who would not qualify for appointment to the civil service could not be appointed a chartered accountant. Moreover, according to Article 22 § 1 of the Civil Servants Code, no person convicted of a felony could be appointed to the civil service. However, this provision referred to convictions by courts established in accordance with Article 87 § 1 of the Constitution. This was not the case with the permanent military courts, because the majority of their members were not career judges enjoying the same guarantees of independence as their civilian colleagues, as envisaged by Article 96 § 5 of the Constitution. As a result, the applicant's conviction by the Athens Permanent Army Tribunal could not be taken into consideration and the Board's decision not to appoint the applicant a chartered accountant had to be quashed.

11. On 21 January 1994 a hearing was held before the Supreme Administrative Court, sitting in plenary. On 11 November 1994 the court decided that the Board had acted in accordance with the law when, for the purposes of applying Article 22 § 1 of the Civil Servants Code, it had taken into consideration the applicant's conviction for felony by the Athens Permanent Army Tribunal. Article 96 § 5 of the Constitution provided that the military courts would continue functioning as they used to until the enactment of a new law which would change their composition. Such a law had not yet been enacted. The Supreme Administrative Court further decided to refer the case back to the Third Chamber and ordered it to examine the remaining issues.

12. The decision of 11 November 1994 was taken by a majority. The minority considered that, since nine years had passed since the Constitution had entered into force without the law envisaged in Article 96 § 5 thereof having been enacted, the guarantees of independence required from civilian judges had to be afforded by the existing military courts. Since that was not the case with the Athens Permanent Army Tribunal, Mr Thlimmenos's application for judicial review had to be allowed.

13. On 26 October 1995 the Third Chamber held a further hearing. On 28 June 1996 it rejected Mr Thlimmenos's application for judicial review, considering, *inter alia*, that the Board's failure to appoint him was not related to his religious beliefs but to the fact that he had committed a criminal offence.

## **II. RELEVANT DOMESTIC LAW**

### **A. Appointment to a chartered accountant's post**

14. Until 30 April 1993 only members of the Greek Institute of Chartered Accountants could provide chartered accountants' services in Greece.

15. Article 10 of Legislative Decree no. 3329/1955, as amended by Article 5 of Presidential Decree no. 15/1989, provided that a person who did not qualify for appointment to the civil service could not be appointed a chartered accountant.

16. According to Article 22 § 1 of the Civil Servants Code, no person convicted of a felony can be appointed to the civil service.

17. On 30 April 1993 the monopoly of the Institute of Chartered Accountants was abolished. Most chartered accountants became members of the Chartered Auditors' Company Ltd.

### **B. The criminal offence of insubordination**

18. Article 70 of the Military Criminal Code in force until 1995 provided:

"A member of the armed forces who, having been ordered by his commander to perform a duty, refuses or fails to execute the order shall be punished -

(a) if the act is committed in front of the enemy or armed insurgents, with death;

(b) in times of war or armed insurgency or during a state of siege or general mobilisation, with death or, if there are extenuating circumstances, with life imprisonment or imprisonment of at least five years and

(c) in all other circumstances, with imprisonment between six months and two years."

19. By virtue of Presidential Decree no. 506/1974, at the time of the applicant's arrest Greece was deemed to be in a state of general mobilisation. This decree is still in force.

20. Article 84 § 2 (a) of the Criminal Code provides that a lesser penalty shall be imposed on persons who, prior to the crime, had led an honest life.

21. Under Article 1 of the Military Criminal Code in force until 1995, offences punishable with a sentence of at least five years' imprisonment were considered to be felonies (*kakuryimata*). Offences punishable with a sentence of up to five years' imprisonment were considered misdemeanours (*plimmelimata*).

22. Under the new Military Criminal Code of 1995 insubordination not committed in time of war or in front of the enemy is considered a misdemeanour.

### **C. The right to conscientious objection to military service**

23. Under section 2(4) of Law no. 731/1977, those who refused to perform unarmed military service on the basis of their religious beliefs were sentenced to imprisonment of a duration equivalent to that of the unarmed service, i.e. less than five years.

24. Law no. 2510/1997, which entered into force on 27 June 1997, gives conscientious objectors the right to perform civilian, instead of military, service. Under section 23(1) and (4) of this law, persons who had been convicted of insubordination in the past were given the possibility of applying for recognition as conscientious objectors. One of the effects of such recognition was having the conviction expunged from one's criminal record.

25. Applications under section 23(1) and (4) of Law no. 2510/1997 had to be lodged within a period of three months starting from 1 January 1998. They were examined by the commission that advises the Minister of National Defence on the recognition of conscientious objectors. The commission had to apply section 18 of Law no. 2510/1997, which provides:

"Persons who invoke their religious or ideological beliefs in order not to fulfil their military obligations for reasons of conscience may be recognised as conscientious objectors ..."

## **AS TO THE LAW**

### **I. SCOPE OF THE CASE**

26. In his original application to the Commission the applicant had complained under Articles 9 and 14 of the Convention about the failure of the authorities to appoint him to a post of chartered accountant and under Article 6 § 1 about the proceedings he had instituted in this connection. Only in his observations in reply to the Government's observations on the admissibility and merits of the application did the applicant also complain of a violation of Article 1 of Protocol No. 1. The Commission declared the latter complaint inadmissible on the ground that it had not been submitted within the six-month time-limit provided by the Convention.

27. In his memorial before the Court the applicant contended that the Court was competent to examine his complaint under Article 1 of Protocol No. 1. Although this complaint had not been expressly raised in the application form, the facts underlying it had been set out therein. The Convention organs were free to give them the proper legal qualification.

28. The Court recalls that the scope of its jurisdiction is determined by the Commission's decision declaring the originating application admissible (see *Süreç v. Turkey (no. 1)* [GC], no. 26682/95, § 40, ECHR 1999-IV). Moreover, it considers, as the Commission did, that the complaint under Article 1 of Protocol No. 1 was separate from the complaints declared admissible. It follows that the Court has no jurisdiction to entertain this complaint.

### **II. THE GOVERNMENT'S PRELIMINARY OBJECTION**

29. The Government argued that the applicant, by using the procedure provided by section 23(1) and (4) of Law no. 2510/1997, could have avoided the consequences of his conviction. They also submitted that he could have applied for a pardon under Article 47 § 1 of the Constitution. However, the Government accepted that, even if the applicant had been recognised as a conscientious objector under Law no. 2510/1997, he would not have been able to obtain reparation for the prejudice he had suffered as a result of his conviction.

30. The applicant claimed that he had not been aware of the three-month time-limit in section 23(1) and (4) of Law no. 2510/1997 and had missed the deadline. In any event, the above provisions were "obscure" and only few conscientious objectors had succeeded in having their past convictions expunged from their criminal records.

31. The Court notes that, even if the applicant had not missed the deadline in section 23(1) and (4) of Law no. 2510/1997, his claim that he could not serve in the armed forces because of his religious beliefs would have been examined by a commission, which would have advised the Minister of National Defence on whether or not he should be recognised as a conscientious objector. This commission and the Minister would not have been obliged to grant the applicant's claim since they, at least to a certain degree, retained discretionary powers (see paragraphs 24 and 25 above). Moreover, it was accepted by the parties that, even if the applicant had obtained the removal of his conviction from his criminal record pursuant to section 23(1) and (4) of Law no. 2510/1997, he would not have been able to obtain reparation for the prejudice he had suffered until then as a result of his conviction. For the same reason the applicant could not have been certain that his request for a pardon would have been granted and, even if it had, the applicant could not have obtained reparation.

32. In any event, the Court notes that, in so far as the Government can be deemed to raise a preliminary objection concerning the applicant's status as a victim within the meaning of Article 34 of the Convention, this objection had not been put forward when the admissibility of the application was being considered by the Commission. There was nothing preventing the Government from raising it at that stage of the proceedings, since Law no. 2510/1997 had been enacted prior to the Commission's admissibility decision. The Court therefore holds that the Government is estopped from raising this preliminary objection and dismisses it (see *Nikolova v. Bulgaria* [GC] no. 31195/96, § 44, ECHR 1999-II).

### III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 9

33. The Court notes that the applicant did not complain about his initial conviction for insubordination. The applicant complained that the law excluding persons convicted of a felony from appointment to a chartered accountant's post did not distinguish between persons convicted as a result of their religious beliefs and persons convicted on other grounds. The applicant invoked Article 14 of the Convention taken in conjunction with Article 9, which provide:

#### Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

#### Article 9

"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."

#### A. Arguments before the Court

34. The applicant submitted that his non-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. In the applicant's view, the law should not have excluded every person convicted of a felony. The legitimacy of the exclusion depended on the nature of the post and of the offence, including the motives of the offender, the time elapsed since the offence and the offender's conduct during that time. Seen in this light, the authorities' failure to appoint the applicant was not necessary. The class of persons to which the applicant belonged, namely male Jehovah's Witnesses whose religion involved compelling reasons for refusing to serve in the armed forces, was different from the class of most other criminal offenders. The Government's failure to take account of this difference amounted to discrimination not tolerated by Article 14 of the Convention taken in conjunction with Article 9.

35. The Government argued that Article 14 of the Convention did not apply because the facts of the case did not fall within the ambit of Article 9. The authorities that refused to appoint the applicant a chartered accountant had no option but to apply a rule that excluded all persons convicted of a felony from such a post. The authorities could not inquire into the reasons that had led to a person's conviction. Because of its generality, the law in question was neutral. Moreover, it served the public interest. A person convicted of a serious offence could not be appointed to the civil service and, by extension, to a post of chartered accountant. This prohibition had to be absolute and no distinction could be made on a case-by-case basis. States had a wide margin of appreciation in the characterisation of criminal offences as felonies or otherwise. The applicant had committed a serious offence by refusing to perform unarmed military service at a time of general mobilisation because he had tried to avoid a very important obligation towards society and the State, linked with the defence, safety and independence of the country. As a result, the sanction was not disproportionate.

36. The Government also stressed that the Court had no competence to examine the applicant's initial conviction. In any event, this had nothing to do with his religious beliefs. The obligation to do military service applied to all Greek males without any exceptions on grounds of religion or conscience. Moreover, the applicant had been convicted of insubordination. Discipline in the army could not be made to depend on whether a soldier agreed with the orders given to him.

37. In the light of all the above, the Government argued that, even if Article 14 applied, there would exist an objective and reasonable justification for the failure to distinguish between the applicant and other persons convicted of a felony. There was no need to point out that Greek Orthodox or Catholic Christians would also be excluded from the profession of chartered accountants if they had committed a felony.

38. The Commission considered that Article 14 applied because it was sufficient that the facts of the case fell within the ambit of Article 9, and, in its opinion, there had been an interference with the rights protected by that Article in the present case. The Commission further considered that the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention was violated not only when States treated differently persons in analogous situations without providing an objective and reasonable justification, but also when States, without an objective and reasonable justification, failed to treat differently persons whose situations were different. In the circumstances of the case, there was no objective and reasonable justification for the failure of the drafters of the rules governing access to the profession of chartered accountants to treat differently persons convicted for refusing to serve in the armed forces on religious grounds from persons convicted of other felonies.

## **B. The Court's assessment**

39. The Court considers that the applicant's complaint falls to be examined under Article 14 of the Convention taken in conjunction with Article 9 for the following reasons.

40. The Court recalls that Article 14 of the Convention has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols. However, the application of Article 14 does not presuppose a breach of one or more of such provisions and to this extent it is autonomous. For Article 14 to become applicable it suffices that the facts of a case fall within the ambit of another substantive provision of the Convention or its Protocols (see the *Inze v. Austria* judgment of 28 October 1987, Series A no. 126, p. 17, § 36).

41. The Court notes that the applicant was not appointed a chartered accountant as a result of his past conviction for insubordination consisting in his refusal to wear the military uniform. He was thus treated differently from the other persons who had applied for that post on the ground of his status as a convicted person. The Court considers that such difference of treatment does not generally come within the scope of Article 14 in so far as it relates to access to a particular profession, the right to freedom of profession not being guaranteed by the Convention.

42. However, the applicant does not complain of the distinction that the rules governing access to the profession make between convicted persons and others. His complaint rather concerns the fact that in the application of the relevant law no distinction is made between persons convicted of offences committed exclusively because of their religious beliefs and persons convicted of other offences. In this context the Court notes that the applicant is a member of the Jehovah's Witnesses, a religious group committed to pacifism, and that there is nothing in the file to disprove the applicant's claim that he refused to wear the military uniform only because he considered that his religion prevented him from doing so. In essence, the applicant's argument amounts to saying that he is discriminated against in the exercise of his freedom of religion, as guaranteed by Article 9 of the Convention, in that he was treated like any other person convicted of a felony although his own conviction resulted from the very exercise of this freedom. Seen in this perspective, the Court accepts that the "set of facts" complained of by the applicant - his being treated as a person convicted of a felony for the purposes of an appointment to a chartered accountant's post despite the fact that the offence for which he had been convicted was prompted by his religious beliefs - "falls within the ambit of a Convention provision", namely Article 9.

43. In order to reach this conclusion, the Court, as opposed to the Commission, does not find it necessary to examine whether the applicant's initial conviction and the authorities' subsequent refusal to appoint him amounted to interference with his rights under Article 9 § 1. In particular, the Court does not have to address, in the present case, the question whether, notwithstanding the wording of Article 4 § 3 (b), the imposition of such sanctions on conscientious objectors to compulsory military service may in itself infringe the right to freedom of thought, conscience and religion guaranteed by Article 9 § 1.

44. The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification (see the Inze judgment cited above, p. 18, §41). However, the Court considers that this is not the only facet of the prohibition of discrimination in Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.

45. It follows that Article 14 of the Convention is of relevance to the applicant's complaint and applies in the circumstances of this case in conjunction with Article 9 thereof.

46. The next question to be addressed is whether Article 14 of the Convention has been complied with. According to its case-law, the Court will have to examine whether the failure to treat the applicant differently from other persons convicted of a felony pursued a legitimate aim. If it did the Court will have to examine whether there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see the Inze judgment cited above, *ibid.*).

47. The Court considers that, as a matter of principle, States have a legitimate interest to exclude some offenders from the profession of chartered accountant. However, the Court also considers that, unlike other convictions for serious criminal offences, a conviction for refusing on religious or philosophical grounds to wear the military uniform cannot imply any dishonesty or moral turpitude likely to undermine the offender's ability to exercise this profession. Excluding the applicant on the ground that he was an unfit person was not, therefore, justified. The Court takes note of the Government's argument that persons who refuse to serve their country must be appropriately punished. However, it also notes that the applicant did serve a prison sentence for his refusal to wear the military uniform. In these circumstances, the Court considers that imposing a further sanction on the applicant was disproportionate. It follows that the applicant's exclusion from the profession of chartered accountants did not pursue a legitimate aim. As a result, the Court finds that there existed no objective and reasonable justification for not treating the applicant differently from other persons convicted of a felony.

48. It is true that the authorities had no option under the law but to refuse to appoint the applicant a chartered accountant. However, contrary to what the Government's representative appeared to argue at the hearing, this cannot absolve the respondent State from responsibility under the Convention. The Court has never excluded that legislation may be found to be in direct breach of the Convention (see, *inter alia*, *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III). In the present case the Court considers that it was the State having enacted the relevant legislation which violated the applicant's right not to be discriminated against in the enjoyment of his right under Article 9 of the Convention. That State did so by failing to introduce appropriate exceptions to the rule barring persons convicted of a felony from the profession of chartered accountants.

49. The Court concludes, therefore, that there has been a violation of Article 14 of the Convention taken in conjunction with Article 9.

#### IV. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

50. The applicant argued that both his initial conviction for insubordination and the authorities' resultant refusal to appoint him as a chartered accountant constituted interference with his right to manifest his religious beliefs under Article 9 of the Convention. The Commission's case-law to the effect that the Convention did not guarantee the right to conscientious objection to military service had to be reviewed in the light of present-day conditions. Virtually all Contracting States now recognised the right to alternative civilian service. Although the Court was admittedly not competent to examine the interference arising out of the applicant's initial conviction, the applicant submitted that the interference arising out of his non-appointment could not be deemed necessary in a democratic society.

51. The Government argued that the authorities' refusal to appoint the applicant did not constitute an interference with his right under Article 9 of the Convention. In any event, it was necessary in a democratic society. At the time when the applicant refused to serve in the armed forces, Greek law only recognised the possibility of unarmed military service because it was considered that giving everybody the right to alternative civilian service could give rise to abuses. As a result, the sanction imposed on him was not disproportionate and the rule excluding persons convicted of a felony from certain positions had to be applied without any distinctions.

52. The Commission did not consider it necessary to address the issue.

53. The Court considers that, since it has found a breach of Article 14 of the Convention taken in conjunction with Article 9 and for the reasons set out in paragraph 43 above, it is not necessary also to consider whether there has been a violation of Article 9 taken on its own.

#### V. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

54. The applicant also complained that the length of the proceedings he instituted before the Supreme Administrative Court to challenge his non-appointment gave rise to a violation of Article 6 § 1 of the Convention, the relevant part of which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

55. The applicant submitted that Article 6 § 1 of the Convention applied to the Supreme Administrative Court proceedings under examination because they did not concern access to the civil service but to a liberal, albeit tightly regulated, profession. Moreover, he argued that the proceedings were not concluded within a reasonable time. The case did not involve complex legal issues. The issues that were referred to the plenary of the Supreme Administrative Court were not raised by the applicant but by the Supreme Administrative Court's Chamber itself. In any event, they could not justify a delay of more than seven years.

56. The Government submitted that Article 6 § 1 was not applicable because the refusal to appoint the applicant was an administrative act falling within the sphere of public law. In any event, the case raised serious constitutional issues. Moreover, lawyers were on strike during many months in 1991, 1992, 1993 and 1994. In the light of all the above and the Supreme Administrative Court's case-load, seven years was a reasonable period.

57. The Commission considered that Article 6 applied because, although chartered accountants were appointed by administrative decision, their occupation was an independent profession. It also considered that complex legal issues were involved. However, the applicant was not responsible for any of the delays. Moreover, there were two periods of inactivity of a total duration of almost three years for which the Government did not offer any explanation apart from the Supreme Administrative Court's case-load. In the view of the Commission, the proceedings were not reasonable in length.

58. The Court recalls that, although regulated by administrative law, the profession of chartered accountants was one of the liberal professions in Greece. As a result, the proceedings instituted by the applicant to challenge the authorities' failure to appoint him to a post of chartered accountant involved a determination of his civil rights within the meaning of Article 6 § 1 of the Convention (see, among others, the *König v. Germany* judgment of 28 June 1978, Series A no. 27, p. 32, § 94).

59. The Court notes that the proceedings before the Supreme Administrative Court began on 8 May 1989, when the applicant lodged his application for judicial review, and ended on 28 June 1996, when the Third Chamber of the court rejected it. They lasted, therefore, seven years, one month and twenty days.

60. The Court recalls that the reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case and with the help of the following criteria: the complexity of



the case, the conduct of the parties, the conduct of the authorities dealing with the case and what was at stake for the applicant (see *Laino v. Italy* [GC], no. 33158/96, § 18, ECHR 1999-I). Employment disputes, to which disputes concerning access to a liberal profession can be compared, call generally for expeditious decision (see the *Vocatur v. Italy* judgment of 24 May 1991, Series A no. 206-C, pp. 32-33, § 17).

61. The Court notes that the case involved legal issues of some complexity. However, the applicant did not cause any delays. And there were two periods of inactivity of a total duration of almost three years. The first such period started on 8 May 1989, when the applicant instituted the proceedings, and ended on 18 April 1991, when the Third Chamber first heard the case. The second started on 11 November 1994, when the plenary court referred the case back to the Third Chamber, and ended on 26 October 1995, when the Third Chamber issued the final decision. The only explanation offered by the Government for these periods of inactivity is the Supreme Administrative Court's case-load.

62. The Court cannot accept this explanation. According to its case-law, it is for Contracting States to organise their legal systems in such a way that their courts can guarantee the right of everyone to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time (see the *Vocatur* judgment cited above, *ibid.*). In the light of all the above and given that the proceedings concerned the applicant's professional future, the Court considers that the length of the proceedings failed to meet the "reasonable time" requirement.

63. The Court concludes, therefore, that there has been a violation of Article 6 § 1 of the Convention.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. Under Article 41 of the Convention,

"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. Pecuniary damage

65. The applicant claimed 84,140,000 drachmas (GRD) for pecuniary damage, including approximately GRD 17,000,000 in respect of salaries lost between the authorities' refusal to appoint him and the abolition of the monopoly of the Institute of Chartered Accountants. In support of his claim, the applicant invoked "a survey conducted by the Institute of Chartered Accountants and a private chartered accountants' firm".

66. The Government submitted that freedom of religion had nothing to do with the above damages. In any event, they pointed out that during the entire period under examination the applicant worked in the private sector and that his claims were not supported by any official documents.

67. The Court notes that, the Government's general remarks about the link between freedom of religion and pecuniary damages notwithstanding, it was not disputed that, if the authorities had not refused to appoint the applicant to a chartered accountant's post, he would have received an income related to this professional activity at least until the abolition of the monopoly of the Institute of Chartered Accountants. However, the Court also notes that the applicant was not unemployed during that period of time. Moreover, the applicant has not shown that the income he would have earned as a chartered accountant would have exceeded the income he had actually earned in private practice during the relevant period of time. The Court, therefore, does not award the applicant any compensation for pecuniary damage.

### B. Non-pecuniary damage

68. The applicant claimed GRD 15,000,000 for non-pecuniary damage.

69. The Government argued that no causal link was established between the violation of the Convention and the above sum. In any event, the claim was excessive.

70. The Court considers that the applicant must have suffered some non-pecuniary damage as a result of the violation of his right under Article 6 § 1 of the Convention to a hearing within a reasonable time and of his right under Article 14 taken in conjunction with Article 9 to be free from discrimination in the exercise of his freedom of religion. The duration of the proceedings must have caused the applicant prolonged insecurity and anxiety about his eligibility to a professional activity to which he aspired. Moreover, the violation of Article 14 of the Convention taken in conjunction with Article 9 occurred in the making of decisions concerning the applicant's access to a profession, which is a central element for the shaping of one's life

plans. Making its assessment on an equitable basis, the Court awards the applicant GRD 6,000,000 for non-pecuniary damage.

### **C. Costs and expenses**

71. The applicant claimed GRD 6,250,000 in respect of costs and expenses incurred in the domestic and Convention proceedings. This amount included GRD 250,000 in lawyers' fees for the applicant's representation before the administrative authorities, GRD 1,700,000 in lawyers' fees for the proceedings before the Supreme Administrative Court, GRD 500,000 in lawyers' fees for the proceedings before the Commission, GRD 2,000,000 in lawyers' fees for the proceedings before the Court, GRD 1,300,000 for travel and subsistence expenses in connection with the appearance of the applicant and his lawyer at the hearing before the Court and GRD 500,000 for miscellaneous expenses.

72. The Government argued that the claim should be awarded only to the extent that the costs and expenses were actually and necessarily incurred and were reasonable as to quantum.

73. The Court agrees with the Government as to the test to be applied in order for costs and expenses to be included in an award under Article 41 of the Convention (see, among other authorities, the *Nikolova* judgment cited above, § 79). Moreover, it considers that the applicant's claim is excessive. The Court therefore awards the applicant GRD 3,000,000 under this head.

### **D. Default interest**

74. 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. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 9;
3. *Holds* that it is not necessary to examine whether there has been a violation of Article 9 of the Convention taken on its own;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
5. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months, the following amounts:
    - (i) 6,000,000 (six million) drachmas for non-pecuniary damage;
    - (ii) 3,000,000 (three million) drachmas for costs and expenses;
  - (b) that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 6 April 2000.

Luzius WILDHABER  
President

Maud DE BOER-BUQUICCHIO  
Deputy Registrar

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[1]. *Note by the Registry.* Protocol No. 11 came into force on 1 November 1998.

[2]. *Note by the Registry.* The full text of the Commission's opinion and of the two separate opinions contained in the report will be reproduced as an annex to the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but in the meantime a copy of the Commission's report is obtainable from the Registry.