



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

COURT (CHAMBER)

CASE OF EFSTRATIOU v. GREECE

(Application no. 24095/94)

JUDGMENT

STRASBOURG

18 December 1996

In the case of *Efstratiou v. Greece*¹,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr T. VILHJÁLMSSON,
Mr N. VALTICOS,
Sir John FREELAND,
Mr M.A. LOPES ROCHA,
Mr L. WILDHABER,
Mr G. MIFSUD BONNICI,
Mr D. GOTCHEV,
Mr P. JAMBREK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 2 September and 27 November 1996,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 28 May 1996, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 24095/94) against the Hellenic Republic lodged with the Commission under Article 25 (art. 25) by three Greek nationals, Petros, Anastassia and Sophia Efstratiou, on 25 April 1994.

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

¹ The case is numbered 77/1996/696/888. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

² Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

the respondent State of its obligations under Article 2 of Protocol No. 1 (P1-2) and of Articles 3, 9 and 13 of the Convention (art. 3, art. 9, art. 13).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicants stated that they wished to take part in the proceedings and designated the lawyers who would represent them (Rule 30).

3. On 10 June 1996 the President of the Court decided that, in the interests of the proper administration of justice, this case should be referred to the Chamber constituted on 27 September 1995 to hear the case of *Valsamis v. Greece*³ (Rule 21 para. 7).

4. That Chamber included ex officio Mr N. Valticos, the elected judge of Greek nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 4 (b)); the other seven members, drawn by lot, were Mr Thór Vilhjálmsson, Sir John Freeland, Mr M.A. Lopes Rocha, Mr L. Wildhaber, Mr G. Mifsud Bonnici, Mr D. Gotchev and Mr P. Jambrek (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

5. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Greek Government ("the Government"), the applicants' lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicants' memorial on 24 July 1996. The Government considered it unnecessary to file one. On 9 August 1996 the Secretary to the Commission indicated that the Delegate did not wish to reply in writing.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 26 August 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

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

(b) for the Commission

Mr M.P. PELLONPÄÄ, *Delegate;*

(c) for the applicants

Mr P.E. BITSAXIS, of the Athens Bar,
Mr N. ALIVIZATOS, Professor of Constitutional Law,
University of Athens, *Advisers.*

³ Case no. 74/1995/580/666.

The Court heard addresses by Mr Pellonpää, Mr Alivizatos, Mr Bitsaxis and Mr Georgakopoulos.

At the hearing the Delegate of the Agent of the Government filed certain documents.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

7. The three applicants are Jehovah's Witnesses. Petros and Anastassia Efstratiou are the parents of Sophia, who was born in 1978 and is currently a pupil in the last three years of State secondary education at a school at Komotini.

According to them, pacifism is a fundamental tenet of their religion and forbids any conduct or practice associated with war or violence, even indirectly. It is for this reason that Jehovah's Witnesses refuse to carry out their military service or to take part in any events with military overtones.

8. At the start of the school year 1993/94 Mr and Mrs Efstratiou submitted a written declaration in order that their daughter Sophia, then 14, should be exempted from attending school religious-education lessons, Orthodox Mass and any other event that was contrary to her religious beliefs, including national-holiday celebrations and public processions.

9. Sophia was exempted from attendance at religious-education lessons and Orthodox Mass.

In October 1993, however, she, in common with the other pupils at her school, was asked to take part in the celebration of the National Day on 28 October, when the outbreak of war between Greece and Fascist Italy on 28 October 1940 is commemorated with school and military parades.

On this occasion school parades take place in nearly all towns and villages. In the capital there is no military parade on 28 October, and in Salonika the school parade is held on a different day from the military parade. The school and military parades are only held simultaneously in a small number of municipalities.

Sophia refused to parade on account of her religious beliefs.

10. On 1 November 1993 the teachers' committee at her school punished her for her failure to attend with two days' suspension from school. That decision was taken in accordance with Circular no. C1/1/1 of 2 January 1990 issued by the Ministry of Education and Religious Affairs (see paragraph 14 below).

11. On 11 November 1994 Sophia was again punished with suspension, for one day, on the ground that she had not taken part in the school parade held on 28 October 1994.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. On religion

12. The 1975 Constitution contains the following provisions:

Article 3

"1. The dominant religion in Greece is that of the Christian Eastern Orthodox Church. The Greek Orthodox Church, which recognises as its head Our Lord Jesus Christ, is indissolubly united, doctrinally, with the Great Church of Constantinople and with any other Christian Church in communion with it [omodoxi], immutably observing, like the other Churches, the holy apostolic and synodical canons and the holy traditions. It is autocephalous and is administered by the Holy Synod, composed of all the bishops in office, and by the standing Holy Synod, which is an emanation of it constituted as laid down in the Charter of the Church and in accordance with the provisions of the Patriarchal Tome of 29 June 1850 and the Synodical Act of 4 September 1928.

2. The ecclesiastical regime in certain regions of the State shall not be deemed contrary to the provisions of the foregoing paragraph.

3. The text of the Holy Scriptures is unalterable. No official translation into any other form of language may be made without the prior consent of the autocephalous Greek Church and the Great Christian Church at Constantinople."

Article 13

"1. Freedom of conscience in religious matters is inviolable. The enjoyment of personal and political rights shall not depend on an individual's religious beliefs.

2. There shall be freedom to practise any known religion; individuals shall be free to perform their rites of worship without hindrance and under the protection of the law. The performance of rites of worship must not prejudice public order or public morals. Proselytism is prohibited.

3. The ministers of all known religions shall be subject to the same supervision by the State and to the same obligations to it as those of the dominant religion.

4. No one may be exempted from discharging his obligations to the State or refuse to comply with the law by reason of his religious convictions.

5. No oath may be required other than under a law which also determines the form of it."

13. A royal decree of 23 July 1833 entitled "Proclamation of the Independence of the Greek Church" described the Orthodox Church as "autocephalous". Greece's successive Constitutions have referred to the Church as being "dominant". According to Greek conceptions, the Orthodox Church represents de jure and de facto the religion of the State itself, a good number of whose administrative and educational functions (marriage and family law, compulsory religious instruction, oaths sworn by members of the Government, etc.) it moreover carries out. Its role in public life is reflected by, among other things, the presence of the Minister of Education and Religious Affairs at the sessions of the Church hierarchy at which the Archbishop of Athens is elected and by the participation of the Church authorities in all official State events; the President of the Republic takes his oath of office according to Orthodox ritual (Article 33 para. 2 of the Constitution); and the official calendar follows that of the Christian Eastern Orthodox Church.

B. On school matters

14. Circular no. C1/1/1 of 2 January 1990 issued by the Ministry of Education and Religious Affairs provides:

"Schoolchildren who are Jehovah's Witnesses shall be exempted from attending religious-education lessons, school prayers and Mass.

...

In order for a schoolchild to benefit from this exemption, both parents (or, in the case of divorced parents, the parent in whom parental authority has been vested by court order, or the person having custody of the child) shall lodge a written declaration to the effect that they and their child (or the child of whom they have custody) are Jehovah's Witnesses.

...

No schoolchild shall be exempted from taking part in other school activities, such as national events."

15. The relevant Articles of Presidential Decree no. 104/1979 of 29 January and 7 February 1979 are the following:

Article 2

"1. The behaviour of pupils inside and outside the school shall constitute their conduct, irrespective of the manner - by act or by omission - in which they express it.

Pupils shall be required to conduct themselves suitably, that is to say in accordance with the rules governing school life and the moral principles governing the social context in which they live, and any act or omission in contravention of the rules and principles in question shall be dealt with according to the procedures provided in the

educational system and may, if necessary, give rise to the disciplinary measures provided in this decree."

The disciplinary measures laid down in Article 27 of the same decree are, in increasing order of severity, a warning, a reprimand, exclusion from lessons for an hour, suspension from school for up to five days and transfer to another school.

Article 28 para. 3

"Suspended pupils may remain at school during teaching hours and take part in various activities, under the responsibility of the headmaster."

C. Appeals

1. The right of petition

16. Article 10 of the Constitution provides:

"Any person, or persons acting jointly, shall be entitled, subject to compliance with the laws of the State, to submit written petitions to the authorities. The latter shall be required to act as quickly as possible in accordance with the provisions in force and to give the petitioner a reasoned written reply in accordance with the statutory provisions."

Article 4 of Legislative Decree no. 796/1971 provides:

"Once the authorities have received the petition [provided for in Article 10 of the Constitution], they must reply in writing and give the petitioner all necessary explanations, within the time deemed absolutely necessary, which shall not exceed thirty days from service of the petition."

2. Judicial review

17. Article 95 of the Constitution is worded as follows:

"The following shall in principle lie within the jurisdiction of the Supreme Administrative Court:

(a) the setting aside, on application, of enforceable acts of the administrative authorities for misuse of authority or error of law.

..."

According to the settled case-law of the Supreme Administrative Court, "decisions of school authorities to impose on pupils the penalties provided in Article 27 of Presidential Decree no. 104/1979 are intended to maintain the necessary discipline within schools and contribute to their smooth running; they are internal measures which cannot be enforced through the courts, and no application lies to have them set aside by the courts"

(judgments nos. 1820/1989, 1821/1989 and 1651/1990). Only transfer to another school has been held to be enforceable and amenable to being quashed by the Supreme Administrative Court (judgment no. 1821/1989).

3. Actions for damages

18. Section 105 of the Introductory Law to the Civil Code provides:

"The State shall be under a duty to make good any damage caused by the unlawful acts or omissions of its organs in the exercise of public authority, except where the unlawful act or omission is intended to serve the public interest. The person responsible shall be jointly and severally liable, without prejudice to the special provisions on ministerial responsibility."

This section establishes the concept of a special prejudicial act in public law, creating State liability in tort. This liability results from unlawful acts or omissions. The acts concerned may be not only legal acts but also physical acts by the administrative authorities, including acts which are not in principle enforceable through the courts (Kyriakopoulos, *Interpretation of the Civil Code*, section 105 of the Introductory Law to the Civil Code, no. 23; Filios, *Contract, Special Part*, volume 6, Tort, 1977, para. 48 B 112; E. Spiliotopoulos, *Administrative Law*, 3rd edition, para. 217; Court of Cassation judgment no. 535/1971, *Nomiko Vima*, 19th year, p. 1414; Court of Cassation judgment no. 492/1967, *Nomiko Vima*, 16th year, p. 75).

The admissibility of an action for damages is subject to one condition, namely the unlawfulness of the act or omission.

Article 57 of the Civil Code ("Personal rights") provides:

"Any person whose personal rights are unlawfully infringed shall be entitled to bring proceedings to enforce cessation of the infringement and restraint of any future infringement. Where the personal rights infringed are those of a deceased person, the right to bring proceedings shall be vested in his spouse, descendants, ascendants, brothers, sisters and testamentary beneficiaries. In addition, claims for damages in accordance with the provisions relating to unlawful acts shall not be excluded."

PROCEEDINGS BEFORE THE COMMISSION

19. The applicants applied to the Commission on 25 April 1994. They alleged violations of Article 2 of Protocol No. 1 (P1-2) and of Articles 3 and 9 of the Convention (art. 3, art. 9) and of Article 13 of the Convention taken together with the aforementioned Articles (art. 13+P1-2, art.13+3, art. 13+9).

20. On 16 October 1995 the Commission declared the application (no. 24095/94) admissible. In its report of 11 April 1996 (Article 31) (art. 31), it expressed the opinion that:

- (a) there had been no violation of Article 2 of Protocol No. 1 (P1-2) in respect of the first two applicants (twenty votes to eight);
- (b) there had been no violation of Article 9 of the Convention (art. 9) in respect of the third applicant (nineteen votes to nine);
- (c) there had been no violation of Article 3 of the Convention (art. 3) in respect of the third applicant (unanimously);
- (d) there had been a violation of Article 13 of the Convention taken together with Article 2 of Protocol No. 1 (art. 13+P1-2) in respect of the first two applicants (twenty-three votes to five);
- (e) there had been a violation of Article 13 of the Convention taken together with Article 9 of the Convention (art. 13+9) in respect of the third applicant (twenty-four votes to four);
- (f) there had been no violation of Article 13 of the Convention taken together with Article 3 of the Convention (art. 13+3) in respect of the third applicant (unanimously).

The full text of the Commission's opinion and of the five separate opinions contained in the report is reproduced as an annex to this judgment⁴

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

21. In their memorial the Government requested the Court to dismiss the application as being unfounded.

AS TO THE LAW

22. Relying on Article 2 of Protocol No. 1 (P1-2) and Articles 3, 9 and 13 of the Convention (art. 3, art. 9, art. 13), the applicants complained of the penalties of suspension from school that were imposed in November 1993 and November 1994 on the pupil Sophia, who had refused to take part in the school parade on 28 October - a national day in Greece - on account of her own and her parents' religious beliefs. They relied on the Commission's opinion in the case of *Arrowsmith v. the United Kingdom* (application no. 7050/75, Decisions and Reports 19, p. 19, para. 69), according to which pacifism as a philosophy fell within the ambit of the right to freedom of thought and conscience, and the attitude of pacifism could thus be seen as a belief protected by Article 9 para. 1 (art. 9-1). They therefore claimed recognition of their pacifism under the head of religious beliefs, since all Jehovah's Witnesses were bound to practise pacifism in daily life.

⁴ For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-VI), but a copy of the Commission's report is obtainable from the registry.

I. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 1 (P1-2)

23. Mr and Mrs Efstratiou alleged that they were the victims of a breach of Article 2 of Protocol No. 1 (P1-2), which provides:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

The parents did not allege any breach of Sophia's right to education. On the other hand, they considered that the above provision (P1-2) prohibited requiring their daughter to take part in events extolling patriotic ideals to which they did not subscribe; pupils' education should be provided through history lessons rather than school parades.

24. The Government contested the parents' submission, arguing that the school parade on 28 October had no military overtones such as to offend pacifist convictions.

They disputed that Mr and Mrs Efstratiou's belief could count as a conviction for the purposes of Article 2 of Protocol No. 1 (P1-2). They added that the State's educational function, which had to be understood in a broad sense, allowed it to include in pupils' school curriculum the requirement to parade on 28 October.

The National Day commemorated Greece's attachment to the values of democracy, liberty and human rights which had provided the foundation for the post-war legal order. It was not an expression of bellicose feelings, nor did it glorify military conflict. Communal celebration of it retained today an idealistic and pacifist character that was strengthened by the presence of school parades.

Lastly, a pupil's temporary suspension had a negligible effect on the annual programme of study and could not be regarded as a denial of the right to education.

25. In the Commission's view, the convictions of Jehovah's Witnesses were protected by Article 2 of Protocol No. 1 (P1-2) and the school parade in question was not of a military character incompatible with pacifist convictions.

At the hearing the Delegate added that the scope of Article 2 of Protocol No. 1 (P1-2) was limited; the provision (P1-2) must enable parents to obtain exemption from religious-education lessons if the religious instruction was contrary to their convictions, but it did not require the State to guarantee that all their wishes, even if they were founded on their convictions, should be acceded to in educational and related matters. In this instance, the pupil had not been refused the right to education by being suspended for only a short time.

26. The Court does not consider that it must rule of its own motion on the question whether the pupil Sophia's right to education was respected.

It reiterates that "the two sentences of Article 2 [of Protocol No. 1] (P1-2) must be read not only in the light of each other but also, in particular, of Articles 8, 9 and 10 of the Convention (art. 8, art. 9, art. 10)" (see the *Kjeldsen, Busk Madsen and Pedersen v. Denmark* judgment of 7 December 1976, Series A no. 23, p. 26, para. 52).

The term "belief" ("conviction") appears in Article 9 (art. 9) in the context of the right to freedom of thought, conscience and religion. The concept of "religious and philosophical convictions" appears in Article 2 of Protocol No. 1 (P1-2). When applying that provision (P1-2), the Court has held that in its ordinary meaning "convictions", taken on its own, is not synonymous with the words "opinions" and "ideas". It denotes "views that attain a certain level of cogency, seriousness, cohesion and importance" (see the *Campbell and Cosans v. the United Kingdom* judgment of 25 February 1982, Series A no. 48, p. 16, para. 36).

27. As the Court observed in its judgment of 25 May 1993 in the case of *Kokkinakis v. Greece* (Series A no. 260-A, p. 18, para. 32), Jehovah's Witnesses enjoy both the status of a "known religion" and the advantages flowing from that as regards observance.

Mr and Mrs Efstratiou were accordingly entitled to rely on the right to respect for their religious convictions within the meaning of this provision (P1-2). It remains to be ascertained whether the State failed to discharge its obligations to respect those convictions in the applicants' case.

28. The Court reiterates that Article 2 of Protocol No. 1 (P1-2) enjoins the State to respect parents' convictions, be they religious or philosophical, throughout the entire State education programme (see the *Kjeldsen, Busk Madsen and Pedersen* judgment cited above, p. 25, para. 51). That duty is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the "functions" assumed by the State. The verb "respect" means more than "acknowledge" or "take into account". In addition to a primarily negative undertaking, it implies some positive obligation on the part of the State (see the *Campbell and Cosans* judgment cited above, p. 17, para. 37).

The Court has also held that "although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position" (*Young, James and Webster v. the United Kingdom* judgment of 13 August 1981, Series A no. 44, p. 25, para. 63).

29. However, "the setting and planning of the curriculum fall in principle within the competence of the Contracting States. This mainly involves questions of expediency on which it is not for the Court to rule and

whose solution may legitimately vary according to the country and the era" (see the Kjeldsen, Busk Madsen and Pedersen judgment cited above, p. 26, para. 53). Given that discretion, the Court has held that the second sentence of Article 2 of Protocol No. 1 (P1-2) forbids the State "to pursue an aim of indoctrination that might be regarded as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded" (*ibid.*).

30. The imposition of disciplinary penalties is an integral part of the process whereby a school seeks to achieve the object for which it was established, including the development and moulding of the character and mental powers of its pupils (see the Campbell and Cosans judgment cited above, p. 14, para. 33).

31. In the first place, the Court notes that Miss Efstratiou was exempted from religious-education lessons and the Orthodox Mass, as had been requested by her parents. The latter also wished to have her exempted from having to parade during the national commemoration on 28 October.

32. While it is not for the Court to rule on the Greek State's decisions as regards the setting and planning of the school curriculum, it is surprised 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.

Nevertheless, it can discern nothing, either in the purpose of the parade or in the arrangements for it, which could offend the applicants' pacifist convictions to an extent prohibited by the second sentence of Article 2 of Protocol No. 1 (P1-2).

Such commemorations of national events serve, in their way, both pacifist objectives and the public interest. The presence of military representatives at some of the parades which take place in Greece on the day in question does not in itself alter the nature of the parades.

Furthermore, the obligation on the pupil does not deprive her parents of their right "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" (see, *mutatis mutandis*, the Kjeldsen, Busk Madsen and Pedersen judgment cited above, p. 28, para. 54).

33. It is not for the Court to rule on the expediency of other educational methods which, in the applicants' view, would be better suited to the aim of perpetuating historical memory among the younger generation. It notes, however, that the penalty of suspension, which cannot be regarded as an exclusively educational measure and may have some psychological impact on the pupil on whom it is imposed, is nevertheless of limited duration and does not require the exclusion of the pupil from the school premises (Article 28 para. 3 of Decree no. 104/1979 - see paragraph 15 above).

34. In conclusion, there has not been a breach of Article 2 of Protocol No. 1 (P1-2).

II. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION (Art. 9)

35. Miss Efstratiou relied on Article 9 of the Convention (art. 9), which provides:

"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."

She asserted that the provision (art. 9) guaranteed her right to the negative freedom not to manifest, by gestures of support, any convictions or opinions contrary to her own. She disputed both the necessity and the proportionality of the interference, having regard to the seriousness of the penalty, which stigmatised her and marginalised her.

36. In the Government's submission, Article 9 (art. 9) protected only aspects of religious practice in a generally recognised form that were strictly a matter of conscience. The State was not under an obligation to take positive measures to adapt its activities to the various manifestations of its citizens' philosophical or religious beliefs.

37. The Commission considered that Article 9 (art. 9) did not confer a right to exemption from disciplinary rules which applied generally and in a neutral manner and that in the instant case there had been no interference with the applicant's right to freedom to manifest her religion or belief.

38. The Court notes at the outset that Miss Efstratiou was exempted from religious education and the Orthodox Mass, as she had requested on the grounds of her own religious beliefs. It has already held, in paragraphs 32-34 above, that the obligation to take part in the school parade was not such as to offend her parents' religious convictions. The impugned measure therefore did not amount to an interference with her right to freedom of religion either (see, in particular, the *Johnston and Others v. Ireland* judgment of 18 December 1986, Series A no. 112, p. 27, para. 63).

39. There has consequently not been a breach of Article 9 of the Convention (art. 9).

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION (Art. 3)

40. Miss Efstratiou went on to allege, without giving any particulars, that her suspension from school was contrary to Article 3 of the Convention (art. 3), which provides:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

41. The Government did not express a view.

42. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (art. 3) (see, in particular, the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 162, and the Campbell and Cosans judgment cited above, pp. 12-13, paras. 27-28). Like the Commission, it perceives no infringement of this provision (art. 3).

43. In conclusion, there has been no breach of Article 3 of the Convention (art. 3).

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION (Art. 13)

44. The three applicants also complained of a breach of Article 13 of the Convention (art. 13), 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."

They asserted that no effective remedy was available to them for submitting their complaints and having the disciplinary penalty set aside.

45. The Government accepted that it was not possible to apply to the Supreme Administrative Court to have the disciplinary measure - which was purely educational - set aside. Apart from the general remedies provided in the Constitution, the applicants could, however, avail themselves of those provided by Article 57 of the Civil Code, for infringement of personal rights, and section 105 of the Introductory Law to the Civil Code, for compensation for damage sustained as a result of an unlawful act by a public authority. The protection guaranteed by the courts therefore satisfied the requirements of Article 13 (art. 13).

46. The Delegate of the Commission pointed out at the hearing that the remedies were inadequate as they presupposed a finding that the public authority's act complained of was unlawful.

47. The Court reiterates that Article 13 (art. 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 (see, in particular, the following judgments: *Klass and Others v. Germany*, 6 September 1978, Series A no. 28, p. 29, para. 64; *Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, Series A no. 139, p. 11, para. 25; and *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, Series A no. 215, p. 39, para. 122).

48. The conclusions in paragraphs 34 and 39 above do not mean that the allegations of failure to comply with Article 2 of Protocol No. 1 (P1-2) and Article 9 of the Convention (art. 9) were not arguable. The Court accepts that they were. The applicants were therefore entitled to have a remedy in order to raise their allegations. On the other hand, as regards the complaint under Article 3 of the Convention (art. 3), on which Miss Efstratiou did not expand, the Court considers that it contains no arguable allegation of a breach (see, *mutatis mutandis*, the Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A no. 172, pp. 14-15, paras. 31-33).

49. It must accordingly be determined whether Greece's legal order afforded the applicants an effective remedy within the meaning of Article 13 of the Convention (art. 13) that enabled them to put forward their arguable complaints and obtain redress.

It was common ground that it was not possible to apply to the administrative courts for judicial review. That being so, the applicants could not obtain a judicial decision that the disciplinary measure of suspension from school was unlawful. Such a decision, however, is a prerequisite for submitting a claim for compensation (see paragraph 18 above). The actions for damages referred to in Article 57 of the Civil Code and section 105 of the Introductory Law to the Civil Code were therefore of no avail to them. As to the other remedies relied on, the Government cited no instance of their use similar to the present case, and their effectiveness has accordingly not been established.

50. Like the Commission, the Court thus finds, having regard to all the circumstances of the case, 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 has consequently been a breach of Article 13 of the Convention taken together with Article 2 of Protocol No. 1 and Article 9 of the Convention (art. 13+P1-2, art. 13+9), but not taken together with Article 3 of the Convention (art. 13+3).

V. APPLICATION OF ARTICLE 50 OF THE CONVENTION (Art. 50)

51. By Article 50 of the Convention (art. 50),

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

A. Non-pecuniary damage

52. Mr and Mrs Efstratiou and their daughter each sought compensation in the amount of 1,000 drachmas.

53. The Government found the applicants' attitude "remarkable". The Delegate of the Commission did not express a view.

54. The Court considers that the applicants have sustained non-pecuniary damage but that the finding of a breach of Article 13 of the Convention taken together with Article 2 of Protocol No. 1 and Article 9 of the Convention (art. 13+P1-2, art. 13+9) is sufficient to compensate them for it.

B. Costs and expenses

55. For the costs and expenses relating to the proceedings at Strasbourg the applicants claimed a sum of 4,500,000 drachmas.

56. The Government questioned the amounts sought in respect of lawyers' fees and sundry expenses. The Delegate of the Commission expressed no view.

57. Having regard to the breach of Article 13 of the Convention (art. 13), the Court, making its assessment on an equitable basis as required by Article 50 (art. 50), awards the applicants 600,000 drachmas in respect of costs and expenses.

C. Default interest

58. 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

1. Holds by seven votes to two that there has not been a breach of Article 2 of Protocol No. 1 (P1-2);
2. Holds by seven votes to two that there has not been a breach of Article 9 of the Convention (art. 9);
3. Holds unanimously that there has not been a breach of Article 3 of the Convention (art. 3);

4. Holds unanimously 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 (art. 13+P1-2, art. 13+9), but not taken together with Article 3 of the Convention (art. 13+3);
5. Holds unanimously that this judgment in itself constitutes sufficient just satisfaction for the alleged non-pecuniary damage;
6. Holds unanimously that the respondent State is to pay the applicants, within three months, 600,000 (six hundred thousand) drachmas for costs and expenses, on which sum simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 18 December 1996.

ROLV RYSSDAL
President

HERBERT PETZOLD
Registrar

In accordance with Article 51 para. 2 of the Convention (art. 51-2) and Rule 53 para. 2 of Rules of Court A, the joint dissenting opinion of Mr Thór Vilhjálmsson and Mr Jambrek is annexed to this judgment.

R.R.
H.P.

JOINT DISSENTING OPINION OF JUDGES THÓR VILHJÁLMSSON AND JAMBREK

In this case we find a violation both of Article 2 of Protocol No. 1 to the Convention (P1-2) and of Article 9 of the Convention (art. 9). In this we disagree with the judgment. On the other points set out in the operative provisions of the judgment we voted in the same way as the majority of the judges.

Article 2 of Protocol No. 1 (P1-2)

Mr and Mrs Efstratiou alleged that there is a breach of this Article (P1-2) where pupils, like their daughter Sophia, are forced as part of their school duties to take part in organised events imbued with a symbolism that is contrary to the most deeply held religious and philosophical convictions of their parents. This applies even more where the events are held in a public place, outside school, on a national holiday with the intention of delivering a message to the community concerned. According to Mr and Mrs Efstratiou, the pupils are thus obliged to show publicly, by their acts, that they adhere to beliefs contrary to those of their parents.

In our opinion, Mr and Mrs Efstratiou's perception of the symbolism of the school parade and its religious and philosophical connotations has to be accepted by the Court unless it is obviously unfounded and unreasonable.

We do not think that the opinions of Mr and Mrs Efstratiou were obviously unfounded and unreasonable. Even if their daughter's participation in the parade would only have taken up part of one day and the punishment for not attending was, in objective terms, not severe, the episode was capable of disturbing both the parents and the girl and humiliating Sophia. Commemorations of national events are valuable to most people, but the Efstratiou family was under no obligation to hold that opinion with regard to the parade at issue in this case. Neither is it an argument against finding a violation that the participation was part of Sophia's education, because the nature of such school activities is not neutral and they do not form part of the usual school curriculum.

For these reasons we find a violation of Article 2 of Protocol No. 1 (P1-2).

Article 9 (art. 9)

Sophia Efstratiou stated that the parade she did not participate in had a character and symbolism that were clearly contrary to her neutralist, pacifist, and thus religious, beliefs. We are of the opinion that the Court has to accept that and we find no basis for seeing Sophia's participation in this parade as necessary in a democratic society, even if this public event clearly was for most people an expression of national values and unity.

We therefore find a violation of Article 9 (art. 9).