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Judgment in the Case of Thlimmenos v. Greece

In a judgment delivered at Strasbourg on 6 April 2000 in the case of Thlimmenos v. Greece, the European Court of Human Rights held unanimously that there had been a violation of Article 14 (prohibition of discrimination) in connection with Article 9 (freedom of thought, conscience and religion) and a violation of Article 6 § 1 (right to a hearing within a reasonable time) of the European Convention on Human Rights. Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 9,000,000 Greek drachmas for non-pecuniary damage and for legal costs and expenses.

1. Principal facts

The applicant, Iakovos Thlimmenos, a Greek national, was born in 1955 and lives in Messinia (Greece).

The applicant is a Jehovah's Witness. On 9 December 1983 the Permanent Martial Court found him guilty of insubordination for refusing to enlist in the army for religious reasons. On February 1989 the executive board of the Greek chartered accountants' body refused to appoint him as a chartered accountant because he had a criminal record, even though he had passed the relevant qualifying exam. Mr Thlimmenos appealed against this decision, but his appeal was finally rejected on 28 June 1996.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 18 December 1996. Having declared the application partly admissible, the Commission adopted a report on 4 December 1998 in which it expressed the opinion that there had been a violation of Article 9 of the Convention in conjunction with Article 14 (twenty two votes to six) and that there had been a violation of Article 6 § 1 (unanimously). It referred the case to the Court on 22 March 1999.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Luzius Wildhaber (Swiss), President,

Elisabeth Palm (Swedish),

Luigi Ferrari Bravo (Italian),

Lucius Caflisch (Swiss),

Jean-Paul Costa (French),

Willi Fuhrmann (Austrian),

Karel Jungwiert (Czech),

Marc Fischbach (Luxemburger),

Bostjan Zupancic (Slovenian),

Nina Vajic (Croatian),

John Hedigan (Irish),

Wilhelmina Thomassen (Dutch),

Margarita Tsatsa-Nikolovska (FYROMacedonia),

Tudor Pantîru (Moldovan),

Egils Levits (Latvian),

Kristaq Traja (Albanian), judges,

Georgios Koumantos (Greek), ad hoc judge, and also Maud de Boer-Buquicchio, Deputy Registrar.

3. Summary of the judgment

Complaints

The applicant complains of violations of his right to freedom of religion, his right not to be subjected to discrimination in this respect and the right to a hearing within a reasonable time in the determination of his civil rights and obligations guaranteed under Articles 9, 14 and 6 § 1 of the Convention as well as of the right to peaceful enjoyment of his possessions guaranteed under Article 1 of Protocol No. 1.

Decision of the Court

Scope of the case

The Court had no jurisdiction to entertain the applicant's complaint under Article 1 of Protocol No. 1, which the Commission had declared inadmissible.

Government's preliminary objection

The applicant would not have obtained full redress if he had had his conviction expunged from his criminal record under a new procedure introduced by the law that recognised the right to conscientious objection to military service. In any event, the Government had not pleaded before the Commission that the applicant could not claim to be a victim because he had not tried to have his conviction expunged. As a result, they were estopped from raising such an objection before the Court.

Article 14 taken in conjunction with Article 9

The applicant was a member of the Jehovah's Witnesses, a religious group committed to pacifism, and there was nothing to disprove his claim that he had refused to wear the military uniform only because he considered that his religion prevented him from doing so. The applicant's complaint was that he was 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. This "set of facts" "fell within the ambit of a Convention provision", namely Article 9. Article 14 therefore entered into play.

The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention was also violated when States without an objective and reasonable justification failed to treat differently persons whose situations are significantly different.

States had a legitimate interest to exclude some offenders from the profession of a chartered accountant. However, unlike other convictions for serious criminal offences, a conviction for refusing on religious or philosophical grounds to wear the military uniform could not 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 applicant had served a prison sentence for his refusal to wear the military uniform. Imposing a further sanction on him was disproportionate. It followed that his exclusion from the profession of chartered accountants did not pursue a legitimate aim. There existed no objective and reasonable justification for not treating the applicant differently from other persons convicted of a felony. The State, in order to ensure respect for Article 14 taken in conjunction with Article 9, should have introduced appropriate exceptions to the rule barring persons convicted of a felony from the profession of chartered accountants.

Article 9

It was not necessary also to consider whether there had been a violation of Article 9 on its own.

Article 6 § 1

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.

The proceedings lasted seven years, one month and twenty days. The applicant had not caused any delays. Moreover, there were two periods of inactivity of a total duration of almost three years, for which the Government could not offer any explanation other than the Council of State's case-load. Given that it was for Contracting States to organise their legal systems in such a way that their courts were able to guarantee the right of everyone to obtain a final decision within a reasonable time and that the proceedings concerned the applicant's professional future, the above length failed to meet the "reasonable time" requirement.

Article 41

The applicant had 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. However, the applicant must have suffered some non-pecuniary damage as a result of the violation of his right under Article 6 § 1 to a hearing within a reasonable time and of his right under Article 14 in conjunction with Article 9 to be free from discrimination in the exercise of his freedom of religion. The applicant was therefore awarded GRD 6,000,000 for non-pecuniary damage and GRD 3,000,000 for costs and expenses.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.

6 April 2000