
CESNUR

CENTER FOR STUDIES ON NEW RELIGIONS

New European Religious Liberty Case Decided Once Again Against Greece

Torino (Italy) December 20, 1997. On December 16, 1997 in the *Canea* case the European Court of Human Rights found once again against Greece in a religious liberty case, this time involving the Roman Catholic Church, whose legal personality had been denied in a specific instance. "Although the facts of the case are somewhat peculiar -- commented Dr. Massimo Introvigne, managing director of CESNUR -- it is worth noting that this is the third time Greece has lost a major religious liberty case before the European Court of Human Rights, after the Kokkinakis (1993) and Manoussakis (1996) cases involving the Jehovah's Witnesses. It is great time Greece recognizes that it is now part of the European Union and surrenders its old laws and discriminations against minority religions". The full text of the decision follows.

EUROPEAN COURT OF HUMAN RIGHTS

CASE OF THE CANEA CATHOLIC CHURCH v. GREECE

(143/1996/762/963)

JUDGMENT

STRASBOURG

16 December 1997

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SUMMARY^[fn1]

Judgment delivered by a Chamber

Greece - Catholic Church unable to take legal proceedings as a result of civil courts refusal to acknowledge that it had legal personality

I. PRELIMINARY ISSUES

Applicant church had validly applied to Commission through the Catholic Bishop of the Islands of Syros, Milos and Thera and Acting Bishop of Crete.

II. GENERAL OBSERVATION

Complaints mainly concerned a restriction on exercise of right of access to a court.

III. ARTICLE 6 B 1 OF THE CONVENTION

Legal personality of Greek Catholic Church and of parish churches had never been called in question since creation of Greek State either by administrative authorities or by courts -- those churches had acquired, used and transferred movable and immovable property, concluded contracts, taken part in transactions and enjoyed tax exemptions -- settled case-law and administrative practice had, over the course of the years, created legal certainty, both in property matters and as regards representation of Catholic parish churches in legal proceedings, and applicant church could reasonably rely on that.

Late compliance by applicant church with relevant rules of domestic law governing acquisition of legal personality or constitution of a union of persons (Article 62 of Code of Civil Procedure) might be interpreted as an admission that countless acts in the past had not been valid -- transfer of property to a new legal entity would be problematical.

Court of Cassation's ruling that applicant church had no capacity to take legal proceedings had imposed on it a real restriction preventing it then and for the future from having any dispute relating to its property rights determined by the courts.

Very substance of "right to a court" impaired.

Conclusion: violation (unanimously).

IV. ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 6 B 1

Applicant church, which owned its land and buildings, had been prevented from taking legal proceedings to protect them, whereas Orthodox Church or the Jewish community could do so in order to protect their own property without any formality or required procedure.

No objective and reasonable justification for such a difference of treatment.

Conclusion: violation (unanimously).

V. ARTICLE 9 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1, EACH TAKEN ALONE OR TOGETHER WITH ARTICLE 14 OF THE CONVENTION

Unnecessary to consider case under these provisions (unanimously).

VI. ARTICLE 50 OF THE CONVENTION

A. Pecuniary damage

Such damage sustained on account of inability to take legal proceedings to secure rebuilding of surrounding wall.

B. Costs and expenses

Sum claimed held to be reasonable.

Conclusion: respondent State to pay applicant church specified sums for pecuniary damage and costs and expenses (unanimously).

COURT'S CASE-LAW REFERRED TO

21.1.1975, *Golder v. the United Kingdom*; 28.5.1985, *Ashingdane v. the United Kingdom*

In the case of *Canea Catholic Church v. Greece*^[fn2] ,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A^[fn3] , as a Chamber composed of the following judges:

Mr R. Bernhardt, *President*,
Mr F. Gölcüklü,
Mr A. Spielmann,
Mr J. De Meyer,
Mr N. Valticos,
Mr R. Pekkanen,
Mr A.N. Loizou,
Mr A.B. Baka,
Mr L. Wildhaber,

and also of Mr H. Petzold, *Registrar*, and Mr P.J Mahoney, *Deputy Registrar*,

Having deliberated in private on 27 September and 29 November 1997,

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 October 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention.

It originated in an application (no. 25528/94) against the Hellenic Republic lodged with the Commission under Article 25 by a Greek national, the Right Reverend Frangiskos Papamanolis, Roman Catholic Bishop of the Islands of Syros, Milos and Thera and Acting Bishop of Crete, on 2 August 1994 on behalf of Canea Catholic Church (see paragraph 26 below).

The Commission's request referred to Articles 44 and 48 and to the declaration whereby Greece recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6, 9 and 14 of the Convention and Article 1 of Protocol No. 1.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant church expressed its wish to take part in the proceedings and designated the lawyers who would represent it.

3. The Chamber to be constituted included *ex officio* Mr N. Valticos, the elected judge of Greek nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 29 October 1996, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr F. Gölcüklü , , Mr A. Spielmann, Mr J. De Meyer, Mr R. Pekkanen, Mr A.N. Loizou, Mr A.B. Baka and Mr L. Wildhaber (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Greek Government ("the Government"), the applicant church's lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant church's memorials on 16 June and 15 July 1997 and the Government's memorial on 10 July 1997.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 22 September 1997. 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, *Adviser*;

(b) for the Commission

Mr D. Sváby, *Delegate*;

(c) for the applicant church

Mr P. Vegleris, of the Athens Bar,
Mr N. Frangakis, of the Athens Bar,
Mr N. Alivizatos, of the Athens Bar, Professor of Law,
University of Athens, *Counsel*.

The Court heard addresses by them.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The Roman Catholic Church of the Virgin Mary (*Tis Panagias*) in Canea is the cathedral of the Roman Catholic diocese of Crete. Built in the thirteenth century, it adjoins a former Capuchin convent and it has been used as a place of worship continuously since at least 1879. The building was acquired by the church by adverse possession (*ektakti khrissiktissia*).

7. In June 1987 two people living next to the church, Mr I.N. and Mr A.K., demolished one of its surrounding walls, which was 1.20 metres high, and made a window looking onto the church in the wall of their own building.

A. Proceedings in the Canea District Court

8. On 2 February 1988 the Church, represented by the abbot, the Right Reverend Giorgios Roussos, applied to the Canea District Court seeking a declaration that it was the owner of the wall in question and orders that the defendants must cease the nuisance and restore the previously existing situation, that the judgment should be provisionally enforceable and that the defendants should be liable to a fine of 100,000 drachmas and six months' imprisonment if they did not comply with the judgment.

The defendants raised an objection to admissibility on the ground that Catholic churches in Greece had no legal personality and were thus prevented from bringing legal proceedings.

The plaintiff church answered the objection by stating that it was a cloister church, founded and authorised before 1830 and recognised under the Protocol of London of 3 February 1830. More particularly, it stated that it was a Capuchin cloister that had been authorised before 1830 and belonged to the diocese of Syros and Thera, which did have legal personality (*aftotelia*).

9. On 18 October 1988 the District Court held that the wall was owned by the church and ordered the defendants to rebuild it to its original height. As to the objection to admissibility, the court held that it was unfounded, accepting the plaintiff church's submissions, which -- it found -- were substantiated by the papal seal of 20 June 1974 that was in the file; the court also noted that the abbot was the manager of its wealth and was therefore entitled to represent it in legal proceedings.

B. Proceedings in the Canea Court of First Instance sitting as an appellate court

10. The defendants appealed against that judgment to the Canea Court of First Instance on 8 December 1988.

11. On 18 May 1989 the Court of First Instance, allowing the appeal, quashed the judgment of the court below for the following reasons.

"(...)

The provisions of the Treaty of Sèvres of 10 August 1920, which remains in force by virtue of Protocol No. 16 annexed to the Treaty of Lausanne of 24 July 1923, require Greece to ensure Greeks' freedom of religion, freedom of worship and equality before the law irrespective of their religious denomination -- freedoms which are, moreover, guaranteed in Articles 4, 5 and 13 of the current Constitution -- but do not provide that religious or other establishments founded by a religious minority may acquire legal personality without complying with the State's laws on the acquisition of legal personality. Furthermore, the Third Protocol of London adopted by the protecting powers on 3 February 1830, and ratified in Greece by the Greek Senate's Memorandum of 10 April

1830, (...) did not confer on the bishops of the Western Church any jurisdiction other than spiritual and administrative, that is to say relating to that Church's domestic order, and the provisions of the canon law that governs the Roman Catholic Church which attribute legal personality to convents and other Church establishments founded by decisions of the bishops of that Church were not adopted.

In the instant case the Holy Church and Holy Convent of the Capuchins, whose date of foundation is not apparent from the evidence, did not acquire legal personality from the sole fact of being founded by the competent bishop in Greece without the formalities laid down in Greek laws on the acquisition of legal personality having been complied with. Consequently, they have no legal standing and their action must be dismissed for that reason in accordance with Article 62 of the Code of Civil Procedure. The failure to comply with the State's laws on the acquisition of legal personality is admitted by the plaintiffs themselves. It must be noted that even if this church was founded before 1830, it accordingly did not acquire legal personality, having failed to comply with the laws of the State.

(...)"

C. Proceedings in the Court of Cassation

12. On 14 December 1990 the church appealed on points of law, alleging a breach of the Protocol of London of 3 February 1830 taken together with the Greek Senate's Memorandum of 10 April 1830, Article 8 of the Treaty of Sèvres of 1920, Article 13 of the Civil Code, Articles 13 and 20 of the Constitution and Article 9 of the European Convention on Human Rights.

In his opinion of 10 December 1992 the reporting judge of the Court of Cassation indicated that he thought the judgment of 18 May 1989 should be quashed; he pointed out that under Article 13 § 2 of the Constitution and Article 8 of the Treaty of Sèvres, Greek nationals belonging to religious minorities enjoyed the same protection in law and in fact and the same safeguards as other Greek nationals and, in particular, had an equal right to establish religious foundations and practise their religion freely; furthermore, under the canon law of the Roman Catholic Church, churches, convents and monasteries established with the approval of the Holy See had legal personality without it being necessary to comply with the formalities laid down in Greek laws. Such a restriction would be contrary to Article 13 of the Constitution and Article 8 of the Treaty of Sèvres.

13. In a judgment of 2 March 1994 the Court of Cassation dismissed the appeal in the following terms:

"(...)

[The Treaty of Sèvres], having been ratified in a statute, was kept in force as domestic law, but inasmuch as its content is covered by the Convention for the Protection of Human Rights and Fundamental Freedoms, which is much wider in scope, the treaty must be regarded as having been abrogated by this subsequent Convention, which pursues the same objective. However, the special provisions of the treaty which are not reproduced in the Rome Convention and do not conflict with it must be regarded as still being in force. By means of the Convention Greece protects, *inter alia*, the religious freedom not only of minorities but of any person within its jurisdiction, irrespective of religion, national origin, membership of an ethnic minority, etc. Article 13 § 2 of the Constitution, which provides for freedom to practise any "known" religion and for freedom to perform religious obligations without hindrance, likewise corresponds to the content [of the Convention].

Regard being had to the foregoing, it is clear that the above-mentioned provisions guarantee to religious minorities freedom of religion, freedom of worship and religious equality and, by extension, the right to found religious associations and establishments, which acquire legal personality as of right but only after complying with the State's laws on such acquisition(...) It is even provided (in Article 13 § 4 of the Constitution) that the religious convictions of minorities cannot constitute a legal ground exempting them from complying with the above-mentioned laws on the acquisition of legal personality, which, by the first sentence of Article 62 of the Code of Civil Procedure, is a condition of being able to bring or defend legal proceedings(...) Consequently, if Article 20 of the Constitution, whereby everyone is entitled to seek legal protection from the courts, is to apply,

the above-mentioned statutory conditions must be satisfied. Furthermore, since section 13 of the Introductory Law to the Civil Code (...) provides that only legal persons 'lawfully constituted' at the date of adoption of the Civil Code continue to exist, the court below rightly held that Article 20 of the Constitution did not apply in the instant case as the formalities required by Greece's laws for the acquisition of legal personality had not been complied with by the appellants."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Statutory provisions

1. *The Constitution*

14. The relevant Articles of the Constitution provide:

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."

2. *The Civil Code*

15. Section 13 of the Introductory Law to the Civil Code provides:

"Legal persons that were lawfully constituted at the date of adoption of the Civil Code [23 February 1946] shall

continue to exist. As regards their legal capacity, administration or functioning, the relevant provisions of the Code shall apply."

16. Article 61 of the Civil Code gives the following definition of a legal person in general:

"A union of persons for the purpose of pursuing a given aim or a group of assets assigned to the service of a given aim may acquire legal personality if the requirements laid down by law are satisfied."

17. The legal persons provided for in the Civil Code are associations (Articles 78 et seq.), foundations (Articles 108 et seq.) and charitable fund-raising committees (Articles 122 et seq.). Non-commercial partnerships only acquire legal personality after taking the publicity measures laid down by law for commercial partnerships (Articles 741 et seq. and Article 784). It must also be noted that the Civil Code makes the provisions on partnerships applicable to unions of persons that have been created to pursue a given aim but are not associations (Article 107).

3. *The Code of Civil Procedure*

18. By Article 62 of the Code of Civil Procedure, "A person who has the capacity to possess rights and be bound by obligations shall also be entitled to bring or defend legal proceedings. Unions of persons which pursue a specified aim without being associations and also partnerships that do not have legal personality may bring or defend legal proceedings." This concept of a union of persons seems to approximate to the concept of a common-interest group in Greek law, since the courts have applied the concept to co-ownership of a seagoing vessel, to a political party and to an association of co-owners of a building.

4. *Law no. 590/1977 on the Charter of the Church of Greece*

19. Section 1(4) of Law no. 590/1977 on the Charter of the Church of Greece confers personality in public law on the Orthodox Church and on a number of its institutions, at least as regards "their legal relations".

5. *The Treaty of Sèvres of 10 August 1920*

20. Article 8 of the Treaty of Sèvres of 10 August 1920 provides:

"Greek nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Greek nationals. In particular they shall have an equal right to establish, manage and control, at their own expense, charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein."

B. Case-law

21. The applicant church annexed to the memorial it filed with the Court a series of judgments given by the highest courts in the land which, it submitted, substantiated its assertion that neither the legal personality of the Catholic Church in Greece nor its capacity to bring or defend legal proceedings had ever been called in question. The decisions were the following:

(a) judgment no. 142/1889 of the Court of Cassation, in which the court held that the appropriate Catholic bishop represented the legal person of the Catholic Church and its parish churches in legal proceedings for the protection of their property, and did so by virtue of the Catholic canon law, which was wholly applicable in Greece in so far as it did not conflict with any provisions of national law;

(b) judgment no. 1437/1896 of the Athens Court of Appeal, in which the court ruled similarly, holding that the canon law of the Catholic Church had been recognised in the Protocol of 3 February 1830 "as having the force of law" in Greece;

(c) judgment no. 256/1902 of the Athens Court of Appeal, in which the court held that it was for the Pope to appoint local administrators of the Catholic Church's property and, moreover, that there was no need for Catholic parish churches "once established and lawfully in existence, to obtain permission from the State authorities to acquire [their] legal personality";

(d) judgment no. 45/1931 of the Court of Appeal of the Aegean Islands, in which it was held that Catholic parish churches were represented by persons appointed by the Pope, according to canon law;

(e) judgment no. 1885/1946 of the Athens Court of Appeal (the first to be given on the subject after the Civil Code of the same year had come into force), in which the court held that legal persons constituted before 1946 were accorded full recognition under section 13 of the Introductory Law to the Civil Code; as regards, more specifically, Catholic Church foundations in Greece, it was held in the same judgment that Catholic bishops had "special" power to constitute them by means of a unilateral decision, without any need for that decision to take any particular form or to be subject to any prior authorisation;

(f) judgment no. 2716/1973 of the Second Division of the Supreme Administrative Court, whereby that court recognised the legal personality of the Catholic convent of the Ursuline Sisters on the island of Tinos, established by law in 1865 and to which was attached the Catholic school operating in Athens under the same name;

(g) judgment no. 1292/1977 of a full court of the Supreme Administrative Court, whereby the court recognised the legal personality of the parish church of St John the Baptist on the island of Thera in a case of expropriation in the public interest;

(h) judgment no. 101/1979 of the Court of Appeal of the Aegean Islands, delivered in a case of unlawful interference with the rights of possession and ownership of the same parish church of the island of Thera, whose capacity to bring and defend legal proceedings was formally confirmed.

On the other hand, following judgment no. 360/1994 delivered by the Court of Cassation in the present case, the Crete Court of Appeal dismissed an action brought jointly by the Episcopal Catholic Church of Crete and the applicant church for recovery of possession of a rented property, holding that the plaintiffs had no standing as they did not have legal personality (judgment no. 408/1995).

22. The Government cited a judgment of the Supreme Administrative Court (no. 239/1966) in which it was held that a monastery founded in 1963 by a decision of the Catholic bishop of Greece had not by virtue of that fact alone acquired legal personality. The Supreme Administrative Court said:

"The Third Protocol of London adopted by the protecting powers on 3 February 1830, and ratified in Greece by the Greek Senate's Memorandum of 10 April 1830, (...) was intended to ensure that the Catholics living in Greece enjoyed freedom of religion and freedom of worship and it did not confer on the bishops of the Western Church any jurisdiction other than spiritual and administrative, that is to say relating to that Church's domestic order, and the provisions of the canon law that governs the Roman Catholic Church which attribute legal personality to convents and other Church establishments founded by decisions of the bishops of that Church were not adopted. The legal personality of Church establishments is a question which does not relate to worship or the Church's domestic order but primarily concerns the legal order of the State and consequently cannot exist unless it is recognised by law."

23. Lastly, in a judgment (no. 1099/1985) of 1985 the Court of Cassation held that the abbot of a monastic establishment of the Roman Catholic Church is empowered to represent it in legal proceedings concerning its property without the written authorisation of the local bishop as provided in canon 1526.

C. Administrative and notarial practice

24. According to the applicant church, numerous notarial acts to which the Catholic Church of Greece and/or Catholic parish churches, duly represented by authorised agents in accordance with Catholic canon law, were parties unequivocally attest that as regards their property, the churches' legal personality has never been challenged. By way of example, it has produced the following documents:

(a) contract of sale no. 17955/1915, whereby the Catholic Cathedral of Athens, duly represented by the Archbishop of the Greek Catholics, purchased 12,500 square metres of land in the Athens suburb of Iraklion. Attached to this contract is an Athens Mortgage Registry certificate dated 13 June 1997 confirming that the contract was registered according to the rules in force;

(b) contract of sale no. 5027/1936, whereby the applicant church, duly represented, purchased a shop in the centre of Canea;

(c) contract of sale no. 271/1955, whereby the Catholic Cathedral of Athens, duly represented, purchased a four-storey building in the centre of Athens. Attached to this contract is an Athens Mortgage Registry certificate dated 13 June 1997 confirming that the contract was registered according to the rules in force;

(d) contract of sale no. 2084/1981, whereby the applicant church sold to the city council of Canea 4,231.75 square metres of land in the city centre; in this document the church of Canea was represented by its bishop, appointed by papal decree;

(e) contract of sale no. 53844/1981, whereby the applicant church, expressly described as a private-law entity and a religious foundation of the Catholic Church, purchased a flat in the Athens suburb of Maroussi;

(f) contract of sale no. 1817/1992, whereby the Catholic Cathedral of Athens sold a flat in Athens which it had acquired by gift in 1980. This notarial act mentions (i) the foundation of the vendor cathedral in 1865 by unilateral act of the Bishop of Syros and (ii) the papal bull of 1973 whereby its representative was appointed according to the rules of Catholic canon law. Attached to this contract is an Athens Mortgage Registry certificate dated 13 June 1997 confirming that it was registered according to the rules in force.

In all these contracts it is expressly stated that the appropriate transfer tax was duly paid; and the contracts were all registered with the appropriate mortgage registries. Furthermore, as may be seen from the tax returns duly completed and submitted by the applicant church for the years 1994, 1995

and 1996, its rent income from its properties, including some of the above-mentioned properties, was exempt from income tax because of the landlord's status as a religious legal entity.

In addition, two inheritance certificates issued by the clerk of the Athens Court of First Instance on an application by the Catholic Cathedral of Athens (the first certificate) and the Catholic parish church of Phira on the island of Thera (the second certificate) attest that these churches were recognised as the sole heirs of persons who died in 1988 and 1990.

PROCEEDINGS BEFORE THE COMMISSION

25. The Right Reverend Frangiskos Papamanolis applied to the Commission on 2 August 1994. He complained of the Greek courts' refusal to acknowledge that the Catholic Church of the Virgin Mary in Canea had legal personality, a refusal which amounted to a discriminatory interference with its right of access to a court, its right to respect for its freedom of religion and its right to the peaceful enjoyment of its possessions; he relied on Articles 6 § 1, 9 and 14 of the Convention and Article 1 of Protocol No. 1.

26. The Commission declared the application (no. 25528/94) admissible on 15 January 1996. In its report of 3 September 1996 (Article 31), it found that the applicant was acting only as the representative of the Catholic Church of the Virgin Mary in Canea, and it accordingly considered that the application should be treated as having been submitted by the church itself. It expressed the opinion that

- a. there had not been a violation of Article 9 of the Convention taken alone (unanimously);
- b. there had been a violation of Article 9 taken together with Article 14 of the Convention (eighteen votes to ten);
- c. no separate issue arose under Article 6 taken either alone or together with Article 14 of the Convention (seventeen votes to eleven);
- d. no separate issue arose under Article 1 of Protocol No. 1 taken either alone or together with Article 14 of the Convention (twenty-one votes to seven).

The full text of the Commission's opinion and of the six separate opinions contained in the report is reproduced as an annex to this judgment[fn4] .

FINAL SUBMISSIONS TO THE COURT

27. In their memorial the Government asked the Court to "dismiss the application".

28. At the hearing the applicant church asked the Court to "accept its application and to hold that there [was] a breach of the Articles involved".

AS TO THE LAW

I. PRELIMINARY ISSUES

29. The Government disputed the standing of the Right Reverend Frangiskos Papamanolis, Roman Catholic Bishop of Syros, Milos and Thera and Acting Bishop of Crete, to represent the applicant church and to have thus applied to the Commission; they pointed out that it was Abbot Roussos who had brought the proceedings in question in the national courts. The Catholic Church of Canea had not provided any explanation as to this change of representative. If Bishop Papamanolis had lodged the application as the statutory representative of the church as a legal entity, the application was inadmissible since the legal entity he claimed to represent did not in fact exist. If, on the other hand, he had acted as the representative of a union of persons, in particular the parishioners who used the church for worship, it had to be concluded that domestic remedies had not been exhausted as the community of parishioners had not, in its own name and in accordance with Article 62 of the Code of Civil Procedure, carried out the necessary formalities to secure adequate legal protection (see paragraph 18 above).

30. The Commission considered that the application should be treated as having been submitted by the church itself (see paragraph 26 above), which it classed as a "non-governmental organisation" within the meaning of Article 25 of the Convention.

31. The Court likewise considers that the Catholic Church of Canea validly applied to the Commission through Bishop Papamanolis; it notes in this connection that the Court of Cassation itself had already held, in judgments nos. 142/1889 and 1099/1985, that the Catholic bishop in charge of the churches in his diocese and the abbots in charge of Catholic monastic establishments were alone empowered to represent those churches and establishments in legal proceedings concerning any claim or issue relating to their property (see paragraphs 21 and 23 above).

II. GENERAL OBSERVATION

32. The applicant church said that the refusal of the Canea Court of First Instance sitting as an appellate court and of the Court of Cassation to recognise it as a legal person with capacity to bring or defend legal proceedings breached Articles 6 and 9 of the Convention and Article 1 of Protocol No. 1, each taken either alone or in combination with Article 14 of the Convention.

33. Unlike the Commission, the Court considers that the applicant church's complaints mainly concern a restriction on the exercise of its right of access to a court. Accordingly, it will consider first the issues relating to Article 6 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

34. The relevant part of Article 6 § 1 of the Convention reads as follows:

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

35. The applicant church alleged that the Court of Cassation's judgment had been an unexpected and unjustified reversal of case-law going back more than a century in which the legal personality of the Catholic Church in general or the various parish churches in particular had never been called in question; the judgment had also evidenced a selective and partial administration of justice as it had permanently deprived the applicant church of the right to take legal proceedings to protect its property, on the sole ground that the church served the Catholic faith.

In its submission, a church, of whatever denomination, should enjoy protection appropriate to its nature and to the purpose for which it was intended. By virtue of the act of its foundation according to the rules of the religion to which it was dedicated, a church like the applicant church had the continuity which the law normally ascribed to legal persons; it therefore did not need to produce a document proving that it had acquired legal personality in accordance with the formalities laid down by law before the Civil Code was introduced in Greece or thereafter and constituting recognition of an association, non-commercial partnership or a foundation as a legal person.

In short, the applicant church, like all the other churches existing in Greece before the Civil Code was brought in, had legal personality *sui generis*.

36. The Government maintained that the applicant church had not *ipso facto* acquired legal personality, because it had not complied with the relevant national legislation. Nor was legal personality conferred on it by the Third Protocol of London, because the Catholic Church of the Virgin Mary had been reopened in 1879, that is to say after the adoption of that protocol, at a time when Crete belonged to the Ottoman Empire; in any case, the protocol only guaranteed religious freedom of minorities and did not settle the question of relations between the Catholic Church established in Greece and the State.

Certainly political, religious or other groups were free to determine their own internal management and organisation, but as regards their relations with the State, it was obvious that they had to comply with national legislation. Only theocracies allowed the representatives of the Church to ignore secular laws and gave the Church temporal powers in defiance of the law. It was inconceivable that Orthodox priests or leaders of other faiths and sects should quite simply be able, on their own authority, to disregard provisions making it necessary for that type of legal personality to be registered.

Greek law afforded religious communities a sufficient number of possibilities for organising their activities and accordingly for fully and efficiently managing their relations with the outside world, and in particular invoking the aid of the courts to protect such of their property as was intended to provide financial support for their objectives or was used for worship. Religious communities were thereby empowered to set up, on their own initiative, separate, independent legal entities like the associations, religious foundations and partnerships referred to in Article 784 of the Civil Code or, if they did not wish to do so, to operate as unions of persons and protect their property by virtue of that status (Article 61 of the Civil Code and Article 62 of the Code of Civil Procedure).

The fact that the applicant church had chosen the wrong means for maintaining that it had acquired legal personality was the sole responsibility of the religious community to which it belonged, and any adverse consequences for its interests -- which were, at all events, provisional as all the above-mentioned possibilities still remained open to it -- could not be imputed to the State.

37. The Commission, having expressed the opinion that there had been a violation of Article 9 of the Convention taken together with Article 14, did not consider it necessary to consider the case under Article 6.

38. In the *Golder v. the United Kingdom* judgment of 21 January 1975 and the *Ashingdane v. the United Kingdom* judgment of 28 May 1985 (Series A no. 18, p. 18, § 36, and no. 93, pp. 24-25, § 57) the Court held that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way the Article embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect.

The right is not, however, an absolute one; since, by its very nature, it calls for regulation by the State, it may be subject to limitations, although these must not restrict or reduce access in such a way or to such an extent that the very essence of the right is impaired.

39. It is apparent from the evidence before the Court that the legal personality of the Greek Catholic Church and of the various parish churches has never been called in question since the creation of the Greek State either by the administrative authorities or by the courts. Those churches -- including the applicant church -- have in their own name acquired, used and freely transferred movable and immovable property, concluded contracts and taken part in, among others, notarial transactions, whose validity has always been recognised. As regards taxation, they have also enjoyed the exemptions provided in Greek legislation on charitable foundations and non-profit-making associations (see paragraphs 21 and 24 above).

40. The Court cannot accept the Government's argument that the applicant church should have carried out the formalities necessary for acquiring one or other form of legal personality provided for in the Civil Code as there was nothing to suggest that it would one day be deprived of access to a court in order to defend its civil rights. Settled case-law and administrative practice had, over the course of the years, created legal certainty, both in property matters and as regards the representation of the various Catholic parish churches in legal proceedings, and the applicant church could reasonably rely on that. In this connection, the Court notes that in the instant case the Canea District Court gave no consideration to the question of legal personality (see

paragraph 9 above) and the reporting judge of the Court of Cassation -- relying on the well-established case-law -- had invited that court to quash the judgment of the Court of First Instance sitting as an appellate court (see paragraph 12 above).

As to the possibility -- which the Government maintained still existed -- of the applicant church's acquiring such a personality or constituting itself as a union of persons in order to be able to bring or defend legal proceedings in the future, in accordance with Article 62 of the Code of Civil Procedure, the Court shares the reservations expressed by counsel for the applicant church. Quite apart from the difficulties of adapting a church to that kind of structure and the procedural problems which might arise in the event of litigation, such late compliance with the relevant rules of domestic law might be interpreted as an admission that countless acts of the applicant church in the past were not valid. Furthermore, the Court of Cassation's judgment would make it problematical to transfer the applicant church's property to a new legal entity which would take the place of the church, hitherto the owner of its property.

41. In holding that the applicant church had no capacity to take legal proceedings, the Court of Cassation did not only penalise the failure to comply with a simple formality necessary for the protection of public order, as the Government maintained. It also imposed a real restriction on the applicant church preventing it on this particular occasion and for the future from having any dispute relating to its property rights determined by the courts; in this connection, the Court notes that on 31 May 1995 the Crete Court of Appeal, relying on the Court of Cassation's judgment, dismissed two actions brought by the applicant church against the lessees of a business it owned, on the ground that it did not have legal personality (see paragraph 21 above).

42. Such a limitation impairs the very substance of the applicant church's "right to a court" and therefore constitutes a breach of Article 6 β 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 6 β 1

43. Article 14 of the Convention provides:

"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."

44. The applicant church maintained that it was the victim of discrimination incompatible with that provision, since the removal of its right to bring or defend legal proceedings was based exclusively on the criterion of religion.

45. The Government argued that no religious community in Greece was entitled to establish a legal entity automatically without complying with the laws of the State. The applicant church had not even alleged that it was a public-law entity, one of whose characteristics lay in its constitution under a law which made provision for its objects, powers and mode of administration and functioning. Even the Orthodox Church, which had existed in Greece since the first century, had not been regarded as a public-law entity *ipso jure*; its status, its organisation and everything to do with its functioning had been laid down in several enactments, the most important being Law no. 590/1977 on the Charter of the Church of Greece (see paragraph 19 above). The administrative unity of the Catholic Church was scarcely compatible with the obligations entailed in Greece by being a public-law entity like the Orthodox Church, notably acceptance of the fact that the Government, the administrative authorities and the courts played a role in the temporal organisation and running of it. Furthermore, the Church of Greece's personality in public law stemmed from the close and very old relations

between it and the State, the overwhelming majority of whose citizens were of the Orthodox faith. As to the personality in public law of Greece's Jewish community, this was explained by the fact that the community was not only a religious organisation but also a union of persons who managed their own affairs and had a number of features in common, including their religion.

46. The Commission, having expressed the opinion that there had been a violation of Article 9 taken together with Article 14, did not consider it necessary to examine the case under Article 14 taken together with Article 6 of the Convention.

47. It is not for the Court to rule on the question whether personality in public law or personality in private law would be more appropriate for the applicant church or to encourage it or the Greek Government to take steps to have one or the other conferred. The Court does no more than note that the applicant church, which owns its land and buildings, has been prevented from taking legal proceedings to protect them, whereas the Orthodox Church or the Jewish community can do so in order to protect their own property without any formality or required procedure.

Having regard to its conclusion under Article 6 β 1 of the Convention, the Court considers that there has also been a breach of Article 14 taken together with Article 6 β 1 as no objective and reasonable justification for such a difference of treatment has been put forward.

V. ALLEGED VIOLATIONS OF ARTICLE 9 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1, EACH TAKEN ALONE OR TOGETHER WITH ARTICLE 14 OF THE CONVENTION

48. The applicant church complained of a breach of its right to freedom of religion and of its right to the peaceful enjoyment of its possessions. It relied on Article 9 of the Convention and Article 1 of Protocol No. 1 respectively, each taken either alone or together with Article 14 of the Convention. Article 9 of the Convention and Article 1 of Protocol No. 1 provide:

Article 9 of the Convention

"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."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Under Article 9 of the Convention and Article 1 of Protocol No. 1 taken alone, the applicant church maintained that the refusal to acknowledge that it had legal personality so that it could take legal proceedings

to protect its property, even if such property was not directly used for religious purposes, infringed its freedom of religion and deprived it of any possibility of applying to the courts in the event of arbitrary dispossession of its property or expropriation. Under Article 14 of the Convention taken together with the foregoing Articles, it argued that it had suffered discrimination on the ground of religion.

49. The Commission expressed the opinion that there had been a violation of Article 9 taken together with Article 14 but no violation of Article 9 taken alone, and considered it unnecessary to examine the case additionally under the other Articles.

50. Having regard to its conclusions in paragraphs 42 and 47 above, the Court holds that it is not necessary to rule on the complaints based on these Articles.

VI. APPLICATION OF ARTICLE 50 OF THE CONVENTION

51. Article 50 of the Convention provides:

"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. Pecuniary damage

52. The applicant church claimed the "token" sum of 5,000,000 drachmas to cover the expenditure necessary for rebuilding the surrounding wall as before and to compensate for part of the damage sustained following the Court of Cassation's judgment, in particular the Crete Court of Appeal's dismissal of an action to regain possession of a building it had let.

53. The Government considered that the sum sought was disproportionate and excessive.

54. The Delegate of the Commission submitted that sums should be awarded to the applicant church for rebuilding the surrounding wall and in respect of non-pecuniary damage.

55. Making its assessment on an equitable basis, the Court awards the applicant church the whole of the sum sought for the pecuniary damage it sustained on account of its inability to take legal proceedings to secure the rebuilding of the surrounding wall.

B. Costs and expenses

56. The applicant church sought 5,908,000 drachmas for costs and expenses incurred in the national courts and subsequently before the Convention's institutions, and it provided a breakdown of that sum.

57. The Government said they were willing to reimburse these costs if the applicant church provided the necessary supporting documents and if the sum proved to be in conformity with the current scales.

58. The Court considers the sum claimed to be reasonable and decides to award it in full.

C. Default interest

59. 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 the applicant church validly applied to the Commission through Bishop Papamanolis;
2. *Holds* that there has been a breach of Article 6 § 1 of the Convention;
3. *Holds* that there has been a breach of Article 14 of the Convention taken together with Article 6 § 1;
4. *Holds* that it is unnecessary to rule on the complaints based on Article 9 of the Convention and Article 1 of Protocol No. 1, each taken alone or combined with Article 14 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant church, within three months, 5,000,000 (five million) drachmas in respect of pecuniary damage and 5,908,000 (five million nine hundred and eight thousand) drachmas for costs and expenses;
 - (b) that simple interest at an annual rate of 6% shall be payable on those sums 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 16 December 1997.

Signed: Rudolf Bernhardt
President

Signed: Herbert Petzold
Registrar

Footnotes

[fn1] . This summary by the registry does not bind the Court.

[fn2] . The case is numbered 143/1996/762/963. 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.

[fn3] . Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

[fn4] . *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment.

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