
Kokkinakis v. Greece [Kokkinakis c. Grèce]

Document Information

Date Adopted: 2004-08-11
Date Ratified: None
Date Effective: None
Submitted to Religlaw: 2003-01-01

Citation Information**Citation Primary Source**

Title: Kokkinakis v. Greece [Kokkinakis c. Grèce]
Author:
Date: 1994-00-00
Source: E.H.R.R.
Volume: 17
Location: 397
Publisher:
Other: <http://hudoc.echr.coe.int/Hudoc1doc/HEJUD/sift/412.txt>

EUROPEAN COURT OF HUMAN RIGHTS

In the case of Kokkinakis v. Greece*,

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 the Rules of Court, as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr R. Bernhardt,
Mr L.-E. Pettiti,
Mr J. De Meyer,
Mr N. Valticos,
Mr S.K. Martens,
Mr I. Foighel,
Mr A.N. Loizou,
Mr M.A. Lopes Rocha,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 27 November 1992 and 19 April 1993,

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

Notes by the Registrar

* The case is numbered 3/1992/348/421. 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.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 21 February 1992, within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 14307/88) against the Hellenic Republic lodged with the Commission under Article 25 (art. 25) by a Greek national, Mr Minos Kokkinakis, on 22 August 1988.

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 the respondent State of its obligations under Articles 7, 9 and 10 (art. 7, art. 9, art. 10).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted 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. 3 (b)). On 27 February 1992, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr L.-E. Pettiti, Mr J. De Meyer, Mr S.K. Martens, Mr I. Foighel, Mr A.N. Loizou and Mr M.A. Lopes Rocha (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Greek Government ("the Government"), the Delegate of the Commission and the applicant's lawyer on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's and the Government's memorials on 12 August 1992. On 17 September the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

On 13 August the Commission had produced various documents, as asked by the Registrar at the Government's request.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 November 1992. 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,
Mr A. Marinos, Judge of the Supreme Administrative
Court, Counsel;

(b) for the Commission

Mr C.L. Rozakis, Delegate;

(c) for the applicant

Mr P. Vegleris, dikigoros (lawyer) and Emeritus
Professor, University of Athens, Counsel,
Mr P. Bitsaxis, dikigoros (lawyer), Adviser.

The Court heard addresses by Mr Georgakopoulos and Mr Marinos for the Government, Mr Rozakis for the Commission and Mr Vegleris and Mr Bitsaxis for the applicant, as well as replies to its questions.

AS TO THE FACTS

I. The circumstances of the case

6. Mr Minos Kokkinakis, a retired businessman of Greek nationality, was born into an Orthodox family at Sitia (Crete) in 1919. After becoming a Jehovah's Witness in 1936, he was arrested more than sixty times for proselytism. He was also interned and imprisoned on several occasions.

The periods of internment, which were ordered by the administrative authorities on the grounds of his activities in religious matters, were spent on various islands in the Aegean (thirteen months in Amorgos in 1938, six in Milos in 1940 and twelve in Makronisos in 1949).

The periods of imprisonment, to which he was sentenced by the courts, were for acts of proselytism (three sentences of two and a half months in 1939 - he was the first Jehovah's Witness to be convicted under the Laws of the Metaxas Government (see paragraph 16 below) -, four and a half months in 1949 and two months in 1962), conscientious

objection (eighteen and a half months in 1941) and holding a religious meeting in a private house (six months in 1952).

Between 1960 and 1970 the applicant was arrested four times and prosecuted but not convicted.

7. On 2 March 1986 he and his wife called at the home of Mrs Kyriakaki in Sitia and engaged in a discussion with her. Mrs Kyriakaki's husband, who was the cantor at a local Orthodox church, informed the police, who arrested Mr and Mrs Kokkinakis and took them to the local police station, where they spent the night of 2-3 March 1986.

A. Proceedings in the Lasithi Criminal Court

8. The applicant and his wife were prosecuted under section 4 of Law no. 1363/1938 making proselytism an offence (see paragraph 16 below) and were committed for trial at the Lasithi Criminal Court (trimeles plimmeliodikio), which heard the case on 20 March 1986.

9. After dismissing an objection that section 4 of that Law was unconstitutional, the Criminal Court heard evidence from Mr and Mrs Kyriakaki, a defence witness and the two defendants and gave judgment on the same day:

"[The defendants], who belong to the Jehovah's Witnesses sect, attempted to proselytise and, directly or indirectly, to intrude on the religious beliefs of Orthodox Christians, with the intention of undermining those beliefs, by taking advantage of their inexperience, their low intellect and their naïvety. In particular, they went to the home of [Mrs Kyriakaki] ... and told her that they brought good news; by insisting in a pressing manner, they gained admittance to the house and began to read from a book on the Scriptures which they interpreted with reference to a king of heaven, to events which had not yet occurred but would occur, etc., encouraging her by means of their judicious, skilful explanations ... to change her Orthodox Christian beliefs."

The court found Mr and Mrs Kokkinakis guilty of proselytism and sentenced each of them to four months' imprisonment, convertible (under Article 82 of the Criminal Code) into a pecuniary penalty of 400 drachmas per day's imprisonment, and a fine of 10,000 drachmas. Under Article 76 of the Criminal Code, it also ordered the confiscation and destruction of four booklets which they had been hoping to sell to Mrs Kyriakaki.

B. The proceedings in the Crete Court of Appeal

10. Mr and Mrs Kokkinakis appealed against this judgment to the Crete Court of Appeal (Efetio). The Court of Appeal quashed

Mrs Kokkinakis's conviction and upheld her husband's but reduced his prison sentence to three months and converted it into a pecuniary penalty of 400 drachmas per day. The following reasons were given for its judgment, which was delivered on 17 March 1987:

"... it was proved that, with the aim of disseminating the articles of faith of the Jehovah's Witnesses sect (airesi), to which the defendant adheres, he attempted, directly and indirectly, to intrude on the religious beliefs of a person of a different religious persuasion from his own, [namely] the Orthodox Christian faith, with the intention of changing those beliefs, by taking advantage of her inexperience, her low intellect and her naïvety. More specifically, at the time and place indicated in the operative provision, he visited Mrs Georgia Kyriakaki and after telling her he brought good news, pressed her to let him into the house, where he began by telling her about the politician Olof Palme and by expounding pacifist views. He then took out a little book containing professions of faith by adherents of the aforementioned sect and began to read out passages from Holy Scripture, which he skilfully analysed in a manner that the Christian woman, for want of adequate grounding in doctrine, could not challenge, and at the same time offered her various similar books and importunately tried, directly and indirectly, to undermine her religious beliefs. He must consequently be declared guilty of the above-mentioned offence, in accordance with the operative provision hereinafter, while the other defendant, his wife Elissavet, must be acquitted, seeing that there is no evidence that she participated in the offence committed by her husband, whom she merely accompanied ..."

One of the appeal judges dissented, and his opinion, which was appended to the judgment, read as follows:

"... the first defendant should also have been acquitted, as none of the evidence shows that Georgia Kyriakaki ... was particularly inexperienced in Orthodox Christian doctrine, being married to a cantor, or of particularly low intellect or particularly naïve, such that the defendant was able to take advantage and ... [thus] induce her to become a member of the Jehovah's Witnesses sect."

According to the record of the hearing of 17 March 1987, Mrs Kyriakaki had given the following evidence:

"They immediately talked to me about Olof Palme, whether he was a pacifist or not, and other subjects that I can't remember. They talked to me about things I did not understand very well. It was not a discussion but a constant monologue by them. ... If they had told me they were Jehovah's Witnesses, I would not have let them in. I don't recall

whether they spoke to me about the Kingdom of Heaven. They stayed in the house about ten minutes or a quarter of an hour. What they told me was religious in nature, but I don't know why they told it to me. I could not know at the outset what the purpose of their visit was. They may have said something to me at the time with a view to undermining my religious beliefs [However,] the discussion did not influence my beliefs ..."

C. The proceedings in the Court of Cassation

11. Mr Kokkinakis appealed on points of law. He maintained, *inter alia*, that the provisions of Law no. 1363/1938 contravened Article 13 of the Constitution (see paragraph 13 below).

12. The Court of Cassation (Arios Pagos) dismissed the appeal on 22 April 1988. It rejected the plea of unconstitutionality for the following reasons:

"Section 4 of Law no. 1363/1938, substituted by section 2 of Law no. 1672/1939 providing for the implementation of Articles 1 and 2 of the Constitution and enacted under the 1911 Constitution then in force, Article 1 of which prohibited proselytism and any other interference with the dominant religion in Greece, namely the Christian Eastern Orthodox Church, not only does not contravene Article 13 of the 1975 Constitution but is fully compatible with the Constitution, which recognises the inviolability of freedom of conscience in religious matters and provides for freedom to practise any known religion, subject to a formal provision in the same Constitution prohibiting proselytism in that proselytism is forbidden in general whatever the religion against which it is directed, including therefore the dominant religion in Greece, in accordance with Article 3 of the 1975 Constitution, namely the Christian Eastern Orthodox Church."

It also noted that the Crete Court of Appeal had given detailed reasons for its judgment and had complied with the 1975 Constitution in applying the impugned provisions.

In the opinion of a dissenting member, the Court of Cassation should have quashed the judgment of the court below for having wrongly applied section 4 of Law no. 1363/1938 in that it had made no mention of the promises whereby the defendant had allegedly attempted to intrude on Mrs Kyriakaki's religious beliefs and had given no particulars of Mrs Kyriakaki's inexperience and low intellect.

II. Relevant domestic law and practice

A. Statutory provisions

1. The Constitution

13. The relevant Articles of the 1975 Constitution read as follows:

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."

14. The Christian Eastern Orthodox Church, which during nearly four centuries of foreign occupation symbolised the maintenance of Greek culture and the Greek language, took an active part in the Greek people's struggle for emancipation, to such an extent that Hellenism is to some extent identified with the Orthodox faith.

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". The overwhelming majority of the population are members of it, and, according to Greek conceptions, it 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.

15. Under the reign of Otto I (1832-62), the Orthodox Church, which had long complained of a Bible society's propaganda directed at young Orthodox schoolchildren on behalf of the Evangelical Church, managed to get a clause added to the first Constitution (1844) forbidding "proselytism and any other action against the dominant religion". The Constitutions of 1864, 1911 and 1952 reproduced the same clause. The 1975 Constitution prohibits proselytism in general (Article 13 para. 2 in fine - see paragraph 13 above): the ban covers all "known religions", meaning those whose doctrines are not apocryphal and in which no secret initiation is required of neophytes.

2. Laws nos. 1363/1938 and 1672/1939

16. During the dictatorship of Metaxas (1936-40) proselytism was made a criminal offence for the first time by section 4 of Law (anagastikos nomos) no. 1363/1938. The following year that section was amended by section 2 of Law no. 1672/1939, in which the meaning of the term "proselytism" was clarified:

"1. Anyone engaging in proselytism shall be liable to imprisonment and a fine of between 1,000 and 50,000 drachmas; he shall, moreover, be subject to police supervision for a period of between six months and one year to be fixed by the court when convicting the offender.

The term of imprisonment may not be commuted to a fine.

2. By 'proselytism' is meant, in particular, any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion (eterodoxos), with the aim of undermining those beliefs, either by any kind of inducement or promise of an inducement or moral support or material assistance, or by fraudulent means or by taking advantage of his inexperience, trust, need, low intellect or naïvety.

3. The commission of such an offence in a school or other educational establishment or a philanthropic institution shall constitute a particularly aggravating circumstance."

B. Case-law

17. In a judgment numbered 2276/1953 a full court of the Supreme Administrative Court (Symvoulío tis Epikratias) gave the following definition of proselytism:

"Article 1 of the Constitution, which establishes the freedom to practise any known religion and to perform rites of worship without hindrance and prohibits proselytism and all other activities directed against the dominant religion, that of the Christian Eastern Orthodox Church, means that purely spiritual teaching does not amount to proselytism, even if it demonstrates the errors of other religions and entices possible disciples away from them, who abandon their original religions of their own free will; this is because spiritual teaching is in the nature of a rite of worship performed freely and without hindrance. Outside such spiritual teaching, which may be freely given, any determined, importunate attempt to entice disciples away from the dominant religion by means that are unlawful or morally reprehensible constitutes proselytism as prohibited by the aforementioned provision of the Constitution."

18. The Greek courts have held that persons were guilty of proselytism who had: likened the saints to "figures adorning the wall", St Gerasimos to "a body stuffed with cotton" and the Church to "a theatre, a market, a cinema"; preached, while displaying a painting showing a crowd of wretched people in rags, that "such are all those who do not embrace my faith" (Court of Cassation, judgment no. 271/1932, Themis XVII, p. 19); promised Orthodox refugees housing on specially favourable terms if they adhered to the Uniate faith (Court of Appeal of the Aegean, judgment no. 2950/1930, Themis B, p. 103); offered a scholarship for study abroad (Court of Cassation, judgment no. 2276/1953); sent Orthodox priests booklets with the recommendation that they should study them and apply their content (Court of Cassation, judgment no. 59/1956, Nomiko Vima, 1956, no. 4, p. 736); distributed "so-called religious" books and booklets free to "illiterate peasants" or to "young schoolchildren" (Court of Cassation,

judgment no. 201/1961, Criminal Annals XI, p. 472); or promised a young seamstress an improvement in her position if she left the Orthodox Church, whose priests were alleged to be "exploiters of society" (Court of Cassation, judgment no. 498/1961, Criminal Annals XII, p. 212).

The Court of Cassation has ruled that the definition of proselytism in section 4 of Law no. 1363/1938 does not contravene the principle that only the law can define a crime and prescribe a penalty. The Piraeus Criminal Court followed it in an order (voulevma) numbered 36/1962 (Greek Lawyers' Journal, 1962, p. 421), adding that the expression "in particular" in section 4 of Law no. 1363/1938 (see paragraph 16 above) referred to the means used by the person committing the offence and not to the description of the actus reus.

19. Until 1975 the Court of Cassation held that the list in section 4 was not exhaustive. In a judgment numbered 997/1975 (Criminal Annals XXVI, p. 380) it added the following clarification:

"... it follows from the provisions of section 4 ... that proselytism consists in a direct or indirect attempt to impinge on religious beliefs by any of the means separately listed in the Law."

20. More recently courts have convicted Jehovah's Witnesses for professing the sect's doctrine "importunately" and accusing the Orthodox Church of being a "source of suffering for the world" (Salonika Court of Appeal, judgment no. 2567/1988); for entering other people's homes in the guise of Christians wishing to spread the New Testament (Florina Court of First Instance, judgment no. 128/1989); and for attempting to give books and booklets to an Orthodox priest at the wheel of his car after stopping him (Lasithi Court of First Instance, judgment no. 357/1990).

In a judgment numbered 1304/1982 (Criminal Annals XXXII, p. 502), on the other hand, the Court of Cassation quashed a judgment of the Athens Court of Appeal (no. 5434/1981) as having no basis in law because, when convicting a Jehovah's Witness, the Court of Appeal had merely reiterated the words of the indictment and had thus not explained how "the importunate teaching of the doctrines of the Jehovah's Witnesses sect" or "distribution of the sect's booklets at a minimal price" had amounted to an attempt to intrude on the complainants' religious beliefs, or shown how the defendant had taken advantage of their "inexperience" and "low intellect". The Court of Cassation remitted the case to a differently constituted bench of the Court of Appeal, which acquitted the defendant.

Similarly, it has been held in several court decisions that the offence of proselytism was not made out where there had merely been a discussion about the beliefs of the Jehovah's Witnesses, where booklets had been distributed from door to door (Patras Court of Appeal, judgment no. 137/1988) or in the street (Larissa Court of Appeal,

judgment no. 749/1986) or where the tenets of the sect had been explained without any deception to an Orthodox Christian (Trikkala Criminal Court, judgment no. 186/1986). Lastly, it has been held that being an "illiterate peasant" is not sufficient to establish the "naïvety", referred to in section 4, of the person whom the alleged proselytiser is addressing (Court of Cassation, judgment no. 1155/1978).

21. After the revision of the Constitution in 1975, the Jehovah's Witnesses brought legal proceedings to challenge the constitutionality of section 4 of Law no. 1363/1938. They complained that the description of the offence was vague, but above all they objected to the actual title of the Law, which indicated that the Law was designed to preserve Articles 1 and 2 of the Constitution in force at the time (the 1911 Constitution - see paragraph 12 above), which prohibited proselytism directed against the dominant religion. In the current Constitution this prohibition is extended to all religions and furthermore is no longer included in the chapter concerning religion but in the one dealing with civil and social rights, and more particularly in Article 13, which guarantees freedom of conscience in religious matters.

The courts have always dismissed such objections of unconstitutionality, although they have been widely supported in legal literature.

III. The Jehovah's Witnesses in Greece

22. The Jehovah's Witnesses movement appeared in Greece at the beginning of the twentieth century. Estimates of its membership today vary between 25,000 and 70,000. Members belong to one of 338 congregations, the first of which was formed in Athens in 1922.

23. Since the revision of the Constitution in 1975 the Supreme Administrative Court has held on several occasions that the Jehovah's Witnesses come within the definition of a "known religion" (judgments nos. 2105 and 2106/1975, 4635/1977, 2484/1980, 4620/1985, 790 and 3533/1986 and 3601/1990). Some first-instance courts, however, continue to rule to the contrary (Heraklion Court of First Instance, judgments nos. 272/1984 and 87/1986). In 1986 the Supreme Administrative Court held (in judgment no. 3533/1986) that a ministerial decision refusing the appointment of a Jehovah's Witness as a literature teacher was contrary to freedom of conscience in religious matters and hence to the Greek Constitution.

24. According to statistics provided by the applicant, 4,400 Jehovah's Witnesses were arrested between 1975 (when democracy was restored) and 1992, and 1,233 of these were committed for trial and 208 convicted. Earlier, several Jehovah's Witnesses had been convicted under Law no. 117/1936 for the prevention of communism and its effects and Law no. 1075/1938 on preserving the social order.

The Government have not challenged the applicant's figures. They have, however, pointed out that there have been signs of a decline in the frequency of convictions of Jehovah's Witnesses, only 7 out of a total of 260 people arrested having been convicted in 1991 and 1992.

PROCEEDINGS BEFORE THE COMMISSION

25. Mr Kokkinakis applied to the Commission on 22 August 1988. He claimed that his conviction for proselytism was in breach of the rights secured in Articles 7, 9 and 10 (art. 7, art. 9, art. 10) of the Convention. He also relied on Article 5 para. 1 and Article 6 paras. 1 and 2 (art. 5-1, art. 6-1, art. 6-2).

26. The Commission declared the application (no. 14307/88) admissible on 7 December 1990 except for the complaints based on Articles 5 and 6 (art. 5, art. 6), which it declared inadmissible as being manifestly ill-founded. In its report of 3 December 1991 (made under Article 31) (art. 31), the Commission expressed the opinion that

(a) there had been no violation of Article 7 (art. 7) (by eleven votes to two);

(b) there had been a violation of Article 9 (art. 9) (unanimously); and

(c) no separate issue arose under Article 10 (art. 10) (by twelve votes to one).

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

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 260-A of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

AS TO THE LAW

27. Mr Kokkinakis complained of his conviction for proselytism; he considered it contrary to Articles 7, 9 and 10 (art. 7, art. 9, art. 10) of the Convention, and to Article 14 taken together with Article 9 (art. 14+9).

I. ALLEGED VIOLATION OF ARTICLE 9 (art. 9)

28. The applicant's complaints mainly concerned a restriction on the exercise of his freedom of religion. The Court will accordingly begin by looking at the issues relating to Article 9 (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."

29. The applicant did not only challenge what he claimed to be the wrongful application to him of section 4 of Law no. 1363/1938. His submission concentrated on the broader problem of whether that enactment was compatible with the right enshrined in Article 9 (art. 9) of the Convention, which, he argued, having been part of Greek law since 1953, took precedence under the Constitution over any contrary statute. He pointed to the logical and legal difficulty of drawing any even remotely clear dividing-line between proselytism and freedom to change one's religion or belief and, either alone or in community with others, in public and in private, to manifest it, which encompassed all forms of teaching, publication and preaching between people.

The ban on proselytism, which was made a criminal offence during the Metaxas dictatorship, was not only unconstitutional, Mr Kokkinakis submitted, but it also formed, together with the other clauses of Law no. 1363/1938, "an arsenal of prohibitions and threats of punishment" hanging over the adherents of all beliefs and all creeds.

Mr Kokkinakis complained, lastly, of the selective application of this Law by the administrative and judicial authorities; it would surpass "even the wildest academic hypothesis" to imagine, for example, the possibility of a complaint being made by a Catholic priest or by a Protestant clergyman against an Orthodox Christian who had attempted to entice one of his flock away from him. It was even less likely that an Orthodox Christian would be prosecuted for proselytising on behalf of the "dominant religion".

30. In the Government's submission, there was freedom to practise all religions in Greece; religious adherents enjoyed the right both to express their beliefs freely and to try to influence the beliefs of others, Christian witness being a duty of all Churches and all Christians. There was, however, a radical difference between bearing witness and "proselytism that is not respectable", the kind that consists in using deceitful, unworthy and immoral means, such as

exploiting the destitution, low intellect and inexperience of one's fellow beings. Section 4 prohibited this kind of proselytism - the "misplaced" proselytism to which the European Court referred in its *Kjeldsen, Busk Madsen and Pedersen v. Denmark* judgment of 7 December 1976 (Series A no. 23, p. 28, para. 54) - and not straightforward religious teaching. Furthermore, it was precisely this definition of proselytism that had been adopted by the Greek courts.

A. General principles

31. As enshrined in Article 9 (art. 9), freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.

While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to "manifest [one's] religion". Bearing witness in words and deeds is bound up with the existence of religious convictions.

According to Article 9 (art. 9), freedom to manifest one's religion is not only exercisable in community with others, "in public" and within the circle of those whose faith one shares, but can also be asserted "alone" and "in private"; furthermore, it includes in principle the right to try to convince one's neighbour, for example through "teaching", failing which, moreover, "freedom to change [one's] religion or belief", enshrined in Article 9 (art. 9), would be likely to remain a dead letter.

32. The requirements of Article 9 (art. 9) are reflected in the Greek Constitution in so far as Article 13 of the latter declares that freedom of conscience in religious matters is inviolable and that there shall be freedom to practise any known religion (see paragraph 13 above). Jehovah's Witnesses accordingly enjoy both the status of a "known religion" and the advantages flowing from that as regards observance (see paragraphs 22-23 above).

33. The fundamental nature of the rights guaranteed in Article 9 para. 1 (art. 9-1) is also reflected in the wording of the paragraph providing for limitations on them. Unlike the second paragraphs of Articles 8, 10 and 11 (art. 8-2, art. 10-2, art. 11-2) which cover all the rights mentioned in the first paragraphs of those Articles (art. 8-1, art. 10-1, art. 11-1), that of Article 9 (art. 9-1) refers only to "freedom to manifest one's religion or belief". In so doing, it recognises that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile

the interests of the various groups and ensure that everyone's beliefs are respected.

34. According to the Government, such restrictions were to be found in the Greek legal system. Article 13 of the 1975 Constitution forbade proselytism in respect of all religions without distinction; and section 4 of Law no. 1363/1938, which attached a criminal penalty to this prohibition, had been upheld by several successive democratic governments notwithstanding its historical and political origins. The sole aim of section 4 was to protect the beliefs of others from activities which undermined their dignity and personality.

35. The Court will confine its attention as far as possible to the issue raised by the specific case before it. It must nevertheless look at the foregoing provisions, since the action complained of by the applicant arose from the application of them (see, *mutatis mutandis*, the *de Geouffre de la Pradelle v. France* judgment of 16 December 1992, Series A no. 253-B, p. 42, para. 31).

B. Application of the principles

36. The sentence passed by the Lasithi Criminal Court and subsequently reduced by the Crete Court of Appeal (see paragraphs 9-10 above) amounts to an interference with the exercise of Mr Kokkinakis's right to "freedom to manifest [his] religion or belief". Such an interference is contrary to Article 9 (art. 9) unless it is "prescribed by law", directed at one or more of the legitimate aims in paragraph 2 (art. 9-2) and "necessary in a democratic society" for achieving them.

1. "Prescribed by law"

37. The applicant said that his submissions relating to Article 7 (art. 7) also applied to the phrase "prescribed by law". The Court will therefore examine them from this point of view.

38. Mr Kokkinakis impugned the very wording of section 4 of Law no. 1363/1938. He criticised the absence of any description of the "objective substance" of the offence of proselytism. He thought this deliberate, as it would tend to make it possible for any kind of religious conversation or communication to be caught by the provision. He referred to the risk of "extendibility" by the police and often by the courts too of the vague terms of the section, such as "in particular" and "indirect attempt" to intrude on the religious beliefs of others. Punishing a non-Orthodox Christian even when he was offering "moral support or material assistance" was tantamount to punishing an act that any religion would prescribe and that the Criminal Code required in certain emergencies. Law no. 1672/1939 (see paragraph 16 above) had, without more, stripped the initial wording of section 4 of its "repetitive verbiage"; it had retained all the "extendible, catch-all" expressions, merely using a more concise

but equally "pedantic" style designed to ensure that non-Orthodox Christians were permanently gagged. Consequently, no citizen could regulate his conduct on the basis of this enactment.

Furthermore, section 4 of Law no. 1363/1938 was incompatible with Article 13 of the Constitution.

39. The Government, on the other hand, maintained that section 4 defined proselytism precisely and specifically; it listed all the ingredients of the offence. The use of the adverbial phrase "in particular" was of no importance, as it related only to the means by which the offence could be committed; indicative lists of this kind were, moreover, commonly included in criminal statutes.

Lastly, the objective substance of the offence was not lacking but consisted in the attempt to change the essentials of the religious beliefs of others.

40. The Court has already noted that the wording of many statutes is not absolutely precise. The need to avoid excessive rigidity and to keep pace with changing circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague (see, for example and mutatis mutandis, the Müller and Others v. Switzerland judgment of 24 May 1988, Series A no. 133, p. 20, para. 29). Criminal-law provisions on proselytism fall within this category. The interpretation and application of such enactments depend on prac