



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

CASE OF LARISSIS AND OTHERS v. GREECE

(140/1996/759/958–960)

JUDGMENT

STRASBOURG

24 February 1998

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SUMMARY¹

Judgment delivered by a Chamber

Greece – conviction of air force officers for proselytism (section 4 of Law no. 1363/1938)

I. ARTICLE 7 OF THE CONVENTION

Position in Greek law had not become any less clear since Court's decision in *Kokkinakis v. Greece* judgment that requirements of certainty and foreseeability under Article 7 were satisfied by definition of offence of proselytism.

Conclusion: no violation (eight votes to one).

II. ARTICLE 9 OF THE CONVENTION

A. Interference

Not disputed that prosecution, conviction and punishment of applicants interfered with exercise of Article 9 rights.

B. “Prescribed by law”

Measures were “prescribed by law”, for same reason Article 7 not violated.

C. Legitimate aim

Protecting rights and freedoms of others.

D. “Necessary in a democratic society”*1. General principles*

Principles set out in *Kokkinakis v. Greece* judgment restated.

2. Proselytising of airmen

Convention applies in principle to armed forces – military hierarchical structures may make it difficult for subordinate to withdraw from conversation initiated by superior, causing risk of harassment – States may therefore be justified in taking special measures to protect rights of subordinate members.

Evidence that three subordinate airmen felt under pressure to take part in religious conversations with applicants, who were superior in rank – measures taken not particularly severe – not disproportionate.

1. This summary by the registry does not bind the Court.

Conclusion: no violation regarding measures taken following proselytising of airmen Antoniadis and Kokkalis (eight votes to one); no violation regarding measures taken following proselytising of airman Kafkas (seven votes to two).

3. *Proselytising of civilians*

No evidence civilians subjected to improper pressure. Measures therefore unjustified.

Conclusion: violation (seven votes to two).

III. ARTICLE 10 OF THE CONVENTION

Conclusion: no separate issue (unanimously).

IV. ARTICLES 14 AND 9 OF THE CONVENTION

No evidence law applied in discriminatory manner.

Conclusion: no violation regarding proselytising of airmen (unanimously); no separate issue regarding proselytising of civilians (unanimously).

V. ARTICLE 50 OF THE CONVENTION

Non-pecuniary damage: compensation awarded.

Costs and expenses: sums claimed awarded in part.

Conclusion: respondent State to pay specified sums to applicants (seven votes to two).

COURT'S CASE-LAW REFERRED TO

8.6.1976, *Engel and Others v. the Netherlands*; 26.4.1979, *Sunday Times v. the United Kingdom* (no. 1); 25.5.1993, *Kokkinakis v. Greece*; 25.11.1997, *Grigoriades v. Greece*

In the case of Larissis and Others v. Greece¹,

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 A², as a Chamber composed of the following judges:

Mr F. GÖLCÜKLÜ, *President*,

Mr R. MACDONALD,

Mr J. DE MEYER,

Mr N. VALTICOS,

Mr R. PEKKANEN,

Mr J.M. MORENILLA,

Mr B. REPIK,

Mr P. KÜRIS,

Mr P. VAN DIJK,

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

Having deliberated in private on 24 September 1997 and 30 January 1998,

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 three applications (nos. 23372/94, 26377/94 and 26378/94) against the Hellenic Republic lodged with the Commission under Article 25 respectively by three Greek nationals, Mr Dimitrios Larissis, Mr Savvas Mandalarides and Mr Ioannis Sarandis, on 28 January 1994.

Notes by the Registrar

1. The case is numbered 140/1996/759/958–960. The first number is the case’s position on the list of cases referred to the Court in the relevant year (second number). The third number indicates the case’s position on the list of cases referred to the Court since its creation and the last two numbers indicate its position on the list of corresponding originating applications to the Commission.

2. 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.

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 Articles 7, 9, 10 and 14 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicants stated that they wished to take part in the proceedings and designated the lawyer who would represent them (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), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 29 October 1996, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr R. Macdonald, Mr J. De Meyer, Mr R. Pekkanen, Mr D. Gotchev, Mr P. Kūris and Mr P. van Dijk (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr B. Repik, substitute judge, replaced Mr Gotchev, who was unable to take part in the further consideration of the case (Rules 22 § 1 and 24 § 1).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Greek Government ("the Government"), the applicants' lawyer 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 Government's memorial on 27 May 1997 and that of the applicants on 28 May 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,
State Legal Council, *Agent,*
Mrs K. GRIGORIOU, Legal Assistant, State Legal Council, *Counsel;*

(b) *for the Commission*

Mr D. ŠVÁBY, *Delegate;*

(c) *for the applicants*

Dr J.W. MONTGOMERY, Barrister-at-Law, *Counsel,*
Mr A. DOS SANTOS, *Adviser.*

The Court heard addresses by Mr Šváby, Dr Montgomery and Mrs Grigoriou.

6. Subsequently, Mr Gölcüklü replaced Mr Ryssdal, who was unable to take part in the further consideration of the case, as President of the Chamber, and Mr J.M. Morenilla, substitute judge, became a full member of the Chamber.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The first applicant, Mr Dimitrios Larissis, was born in 1949 and lives in Tanagra Viotias. The second applicant, Mr Savvas Mandalarides, was born in 1948 and lives at Agria Volou. The third applicant, Mr Ioannis Sarandis, was born in 1951 and lives in Kamatero Attikis.

At the time of the events in question, the three applicants were officers in the same unit of the Greek air force. They were all followers of the Pentecostal Church, a Protestant Christian denomination which adheres to the principle that it is the duty of all believers to engage in evangelism.

A. The alleged acts of proselytism

1. *The alleged proselytising of airman Georgios Antoniadis by the first and second applicants*

8. In the evidence he gave for the purposes of the prosecution against the applicants (see paragraph 13 below), airman Antoniadis said that he was transferred to the applicants' unit in 1986, two months after joining the air force, and was placed under the command of the second applicant in the teletyping service. On approximately seven occasions the first and second applicants engaged him in religious discussions, reading aloud extracts from the Bible and encouraging him to accept the beliefs of the Pentecostal Church. The second applicant told him that some members of the sect were able to speak in foreign languages with the assistance of divine power. Whenever airman Antoniadis returned from leave, the second applicant asked him if he had visited the Pentecostal Church. The former testified that he felt obliged to take part in these discussions because the applicants were his superior officers.

2. *The alleged proselytising of airman Athanassios Kokkalis by the first and third applicants*

9. In his statement before the Athens Permanent Air Force Court (see paragraph 13 below), airman Kokkalis testified that he served in the applicants' unit between spring 1987 and October 1988, although he was not under the direct command of any of them. During that time the first applicant engaged him in theological discussions on approximately thirty occasions, and the third applicant on approximately fifty occasions, initially concealing the fact that they were not Orthodox Christians but subsequently criticising some of the tenets of that faith and urging airman Kokkalis to accept their beliefs. The third applicant repeatedly asked him to visit the Pentecostal Church in Larissa while he was on leave, telling him that miracles took place there including the acquisition by believers of the ability to speak in foreign languages, and gave him the Pentecostal newspaper *Christianismos* to read. The applicants were very good officers and were always polite to him, but their approaches bothered him nonetheless.

3. *The alleged proselytising of airman Nikolaos Kafkas by the first and third applicants*

10. Airman Nikolaos Kafkas was unable to give evidence at the first-instance hearing because his wife was ill, but he told the Courts-Martial Appeal Court (see paragraph 21 below) that he had served in the same unit as the applicants, under the command of the third applicant, between winter 1988 and August 1989. The applicants did not put any pressure on him to become a member of the Pentecostal Church. He himself approached the third applicant and asked why he was so peaceful, to which the latter replied that this was the result of reading the Gospel. When, at the suggestion of the first and third applicants, he started to read the Bible, he noticed a number of points of divergence between it and the teachings of the Orthodox Church. He did not have any discussions with the applicants concerning the Orthodox and Pentecostal Churches, although he did seek their advice whenever he had any questions concerning the Bible and always found their replies convincing. They never gave him any Pentecostal literature or told him to go to the Pentecostal Church. The third applicant never authorised his absence for purposes related to the Pentecostal Church, which he had visited for the first time in September 1989, after he had been discharged from the armed forces.

Airman Kafkas's father, Mr Alexandros Kafkas, told the first-instance court that his son had been converted from the Orthodox to the Pentecostal Church while serving in the air force under the orders of the third applicant. According to his father, shortly after he joined the unit his behaviour changed. He stopped seeing his friends, spent long periods of time in his room studying the Bible and listening to taped sermons and brought back

from the barracks his television and radio sets and the books from which he used to study for university entrance examinations. He told his father that he had met two officers who were real Christians, unlike his father. When his parents followed him on one of his visits to the Pentecostal Church, he left home and went to live in Athens. He returned after twenty days, when he reconverted to the Orthodox Church, explaining to his father that the first and third applicants had converted him to the Pentecostal Church, taking advantage of their rank to exert pressure on him and using special skills of persuasion. They had told him that he would be given leave of absence if he promised to visit their church. When Alexandros Kafkas left to go on a trip, Nikolaos reconverted to the Pentecostal Church. His father concluded that his son had no will of his own and always did as he was told by other members of the Pentecostal Church.

4. The alleged proselytising of the Baïramis family and their neighbours by the second applicant

11. According to the statement of Captain Ilias Baïramis, his brother-in-law, Mr Charalampos Apostolidis, a member of the Pentecostal Church, began one day to rage at his wife, telling her that he saw Satan in her. The second applicant was summoned, and as soon as he arrived Mr Apostolidis became calmer. The second applicant then preached a sermon to the members of the Baïramis family and some neighbours who had come to see what was going on, in the course of which he urged them all to convert to the Pentecostal religion.

5. The alleged proselytising of Mrs Anastassia Zounara by the second and third applicants

12. In a statement prepared for the purposes of an administrative inquiry against the applicants, Mrs Anastassia Zounara explained that her husband had joined the Pentecostal Church, which led to the breakdown of her family life with him. In an attempt to understand her husband's behaviour, Mrs Zounara visited the Pentecostal Church and the applicants' homes on several occasions over a period of about five months. During this time the applicants, particularly the second and third applicants, used to visit her and urge her to join their Church. They told her that they had received signs from God and could predict the future, and that Mrs Zounara and her children were possessed by the devil. Eventually she developed psychological problems and severed all links with the applicants and the Pentecostal Church.

B. The trial at first instance

13. On 18 May 1992, the applicants appeared before the Permanent Air Force Court (*Diarkes Stratodikio Aeroporias*) in Athens, composed of one officer with legal training and four other officers. They were tried for various offences of proselytism, under section 4 of Law no. 1363/1938 as amended (henceforth, “section 4” – see paragraph 27 below).

14. In a decision delivered on the day of the hearing (no. 209/92), the court rejected the defence’s argument that the law against proselytism was unconstitutional, finding that no issue could arise under the principle *nullum crimen sine lege certa* because of the non-exhaustive enumeration in the statute of the means by which an intrusion on another person’s religious beliefs could be brought about. It found all three applicants guilty of proselytism, holding in particular as follows.

1. The first applicant

15. In respect of the first applicant, the court observed:

“The accused, while he was a military officer ... serving in Unit X, committed the offence of proselytism in the military camp of this unit between November 1986 and December 1987 by engaging in several acts which ... gave rise to a single, albeit continuing, breach of the relevant criminal provision. He acted with the aim of intruding on and changing the religious beliefs of airman Georgios Antoniadis, an Orthodox Christian who served in the same unit. Abusing the trust placed in him by airman Antoniadis, who was his hierarchical subordinate, the accused tried on approximately twenty occasions to persuade airman Antoniadis to become a member of the sect of the Pentecostal Church by engaging in discussions on theology with him in the course of which the accused contested the correctness of the teachings of the university department of theology concerning God and the Orthodox dogma. He also encouraged airman Antoniadis to read the Bible in the light of the accused’s own beliefs as a member of the Pentecostal Church, questioned the holy traditions and recommended that he visit the church of the Pentecostal sect in Athens.

Acting in the same capacity, the accused committed the offence of proselytism between May 1987 and February 1988 by engaging in several acts which ... gave rise to a single, albeit continuing, breach of the relevant criminal provision. He acted with the aim of intruding on and changing the religious beliefs of airman Athanassios Kokkalis, an Orthodox Christian who served in the same unit. On approximately thirty occasions the accused tried to persuade airman Kokkalis to become a member of the sect of the Church of Pentecost by engaging, persistently and importunately, in discussions with him about the correctness of his beliefs as a member of the sect of the Pentecostal Church, questioning the holiness of the Christian Orthodox Church and inviting airman Kokkalis to listen to taped recordings on the beliefs of the Pentecostal sect. The accused took advantage of the trust inherent in the relationship between a subordinate and a superior and of airman Kokkalis’s naïvety, inexperience and youth, telling him that in his Church some people started speaking foreign languages under the effect of the Holy Spirit.

Acting in the same capacity, the accused committed the offence of proselytism between spring 1989 and 18 August 1989, in the place mentioned above, by ... acting with the aim of intruding on and changing the religious beliefs of airman Nikolaos Kafkas, who served under his orders in the same unit. Taking advantage of the trust inherent in the relationship between a subordinate and a superior, and of the young man's naïvety and inexperience, the accused tried to persuade airman Kafkas to become a member of the sect of the Church of Pentecost by continually, persistently and importunately expounding on his beliefs concerning the sect of the Pentecostal Church, reading and explaining the Bible in the light of his beliefs and providing him with copies of a tract entitled *Christianismos*. The accused succeeded in converting airman Kafkas by taking advantage of the latter's inexperience in theological matters and the influence he had on him due to his position and rank."

The court also found the first applicant guilty of proselytising another airman, Stefanos Voikos.

16. It sentenced him to five months' imprisonment for proselytising airman Antoniadis, five months' imprisonment for proselytising airman Kokkalis, five months' imprisonment for proselytising airman Voikos and seven months' imprisonment for proselytising airman Kafkas. Overall, however, because some of these periods were to run concurrently, the first applicant was ordered to spend thirteen months in prison. The court ordered that these penalties be converted to fines and not enforced provided the applicant did not commit new offences in the following three years.

2. *The second applicant*

17. In respect of the second applicant, the court held as follows:

"The accused, while he was a military officer ... serving in Unit X, committed the offence of proselytism in the military camp of this unit between November 1986 and December 1987 by engaging in several acts which ... gave rise to a single, albeit continuing, breach of the relevant criminal provision. He took advantage of the authority exercisable by him due to the difference in rank over airman Georgiades Antoniadis, who served in the same unit. On approximately seven occasions, on dates which have not been specified, the accused tried to intrude on and change the religious beliefs of airman Antoniadis by means of skilful discussions with him concerning religion. The accused urged airman Antoniadis, because of his youth, to study nothing but the Gospel, where he told him he would find the truth, which differed from the Orthodox dogma. He also tried, by means of skilful interpretation of extracts from the Holy Gospel in accordance with the beliefs of the sect of the Pentecost, to convince him that the Orthodox faith was not correct and that he should adopt the beliefs of the accused, urging him at the same time in a pressing manner to visit during his leave the church of the Pentecostal sect in Athens.

The accused also committed the offence of proselytism in Vólos in 1988 by ... taking advantage of the inexperience and intellectual weakness of Mrs Anastassia Zounara. He tried on several occasions, on dates which have not been specified, to intrude on and change her religious beliefs by engaging in a skilful analysis of the beliefs of the sect of the Pentecost and their difference from those of the Orthodox faith. Elaborating on the correctness of the former, he tried persistently to convince her that the followers of the Pentecostal Church bore marks given to them

by God, that they could prophesy the future, that she and her children were possessed by the devil who was fighting to keep control over her, that she worshipped idols and demons and that the Pentecostal Church held the truth. He also urged her in a pressing manner to be baptised and become a member of the Pentecostal Church.

The accused also committed the offence of proselytism in Vólos on a date which has not been specified towards the beginning of June 1989. Having been summoned by Captain Ilias Baïramis, the accused went to the house of Mr Apostolos Baïramis, Captain Baïramis's brother, where Mr Charalampos Apostolidis, the brother-in-law of the Baïramis brothers and a follower of the sect of the Pentecostal Church, was in a delirious state under the influence of his religious beliefs. He was foaming at the mouth, invoking Christ's name and saying 'Thank you Christ, because I have known the truth, I see the devil in my wife's and children's faces'. The mere fact of the accused's presence calmed Mr Apostolidis, and the former skilfully took advantage of this by attempting to intrude upon and change the religious beliefs of Apostolos Baïramis and Marigoula, Sotirios and Evangelis Baïrami, who were present during the incident and had been impressed by it, and of a number of neighbours who gathered afterwards. He preached to them, elaborating on the beliefs of the sect of the Pentecostal Church and telling them that these, and not those of the Orthodox Church, were correct and that in 1992 the world would come to an end and the Church would be 'captured'. He urged them persistently and importunately to believe in the true Christ and told them that, by virtue of being Christian Orthodox, they had taken sides with the devil."

18. The second applicant was sentenced to five months' imprisonment for proselytising airman Antoniadis, five months' imprisonment for proselytising Mrs Zounara, and eight months' imprisonment for proselytising the Baïramis family and their neighbours, although he was only to serve twelve months overall. The court ordered that these penalties be converted to fines and not enforced provided the applicant did not commit new offences in the following three years.

3. The third applicant

19. In respect of the third applicant, the court held as follows:

"The accused, while he was a military officer ... serving in Unit X, committed the offence of proselytism in the military camp of this unit between May 1987 and February 1988 by engaging in several acts which ... gave rise to a single, albeit continuing, breach of the relevant criminal provision. He acted with the aim of intruding on and changing the religious beliefs of airman Athanassios Kokkalis, an Orthodox Christian who served in the same unit. Taking advantage of the trust inherent in the relationship between a subordinate and a superior, the accused tried more than fifty times to convince airman Kokkalis that the teachings of the Orthodox faith were not correct on a number of issues, such as the virginity of the Holy Mother, the ranks of the priests and the power of the Holy Spirit. He engaged with airman Kokkalis in persistent and importunate discussions regarding the teachings of the sect of the Pentecostal Church, of which the accused was a follower, telling him that the teachings of the sect, rather than those of the Orthodox Church, were correct. He urged him to visit a place in Larissa where the followers of the Pentecostal Church

used to gather and to become a member of the sect and he gave him a free copy of a periodical published by the followers of the Pentecostal Church entitled *Christianismos*. In the course of these encounters the accused intentionally failed to reveal to airman Kokkalis that he was a member of the Pentecostal sect.

Acting in the same capacity, the accused committed the offence of proselytism in the same place for a period of four to five months in 1988, ... acting with the aim of intruding on and changing the religious beliefs of Mrs Anastassia Zounara, an Orthodox Christian. He skilfully took advantage of her inexperience in religious matters and her intellectual weakness, resulting from her low level of education, and tried importunately to persuade her to be baptised and become a member of the sect of the Pentecostal Church. He told her constantly that he bore signs given to him by God, that he could foresee the future and that she and her children were possessed. His intention was to undermine her faith in Orthodoxy and convert her to the sect of the Pentecostal Church.

Acting in the same capacity, the accused committed the offence of proselytism in the same place between spring 1989 and 18 August 1989, ... acting with the aim of intruding on and changing the religious beliefs of airman Nikolaos Kafkas, an Orthodox Christian who served in the same unit. Taking advantage of the trust inherent in the relationship between a subordinate and a superior and of airman Kafkas's naivety and inexperience, the accused tried to persuade him to adhere to the sect of the Pentecostal Church. He engaged in continual, persistent and importunate analysis of his beliefs regarding the sect of the Pentecostal Church, continually reading the Gospel which he interpreted in accordance with his beliefs. He gave airman Kafkas publications of his sect and took him to his place of worship. In this way, he succeeded in converting airman Kafkas, taking advantage of his inexperience in religious matters and the influence he had on him because of his position and rank."

The court also found that the third applicant had engaged in the proselytising of a warrant officer, Adjutant Theophilos Tsikas.

20. He was sentenced to eight months' imprisonment for proselytising airman Kokkalis, five months' imprisonment for proselytising Mrs Zounara, five months' imprisonment for proselytising Adjutant Tsikas and seven months' imprisonment for proselytising airman Kafkas. He was to serve fourteen months overall. The court ordered that these penalties be converted to fines and not enforced provided the applicant did not commit new offences in the following three years.

C. The appeal to the Courts-Martial Appeal Court

21. The applicants appealed immediately to the Courts-Martial Appeal Court (*Anatheoritiko Dikastirio*), a court composed of five military judges. Their appeal was heard on 7 October 1992.

22. In a judgment pronounced immediately after the hearing (no. 390/1992), the Appeal Court rejected the defence's argument to the effect that the accused had merely exercised a constitutional right and upheld most of their convictions, using the same reasoning as the first-

instance court. It did, however, reverse the conviction of the first applicant for proselytising airman Voikos and that of the third applicant for proselytising Adjutant Tsikas (see paragraphs 15 and 19 above).

23. The Appeal Court maintained the penalties imposed by the first-instance court on the first and third applicants in respect of the convictions it had upheld. However, because of the quashing of the two convictions, their overall sentences were reduced to eleven and twelve months respectively.

It reduced the second applicant's sentence to four months' imprisonment for proselytising airman Antoniadis, four months for proselytising Mrs Zounara, and six months for proselytising the Baïramis family and neighbours. His overall sentence was reduced to ten months' imprisonment.

24. As none of the overall sentences imposed involved more than one year's imprisonment, they were automatically converted by the court into pecuniary penalties of 1,000 drachmas per day. The court ordered that the penalties should not be enforced provided that the applicants did not commit new criminal offences in the following three years.

D. The appeal to the Court of Cassation

25. The applicants appealed in cassation.

In a judgment delivered on 30 July 1993 (no. 1266/1993), the Court of Cassation (*Arios Pagos*) found as follows:

“It follows from section 4(1) and (2) of Law no. 1363/1938 [see paragraph 27 below] that in order for the crime of proselytism ... to be established, there must be a direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion with the aim of undermining those beliefs, provided that the attempt is made using the means enumerated in a non-exhaustive fashion in the above-mentioned section, namely 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 the other person's inexperience, trust, need, low intelligence or naïvety.

The above-mentioned provisions of this section ... are not contrary to [the provisions of the Greek Constitution guaranteeing the principle *nullum crimen, nulla poena sine lege*]; moreover, they are perfectly consistent with Article 13 of the Constitution [see paragraph 26 below], which provides that all known religions are free since, under Article 13, proselytism is prohibited... The argument to the contrary finds no support in the fact that under [the previous Constitutions] the prohibition of proselytism was designed to protect the then (and still) dominant religion, whereas under the present Constitution that prohibition is associated with freedom of conscience in religious matters relating to all known religions. This reasoning is undeniably consistent with both the letter and the spirit [of section 4], pursuant to which protection from proselytism employing the unlawful means set out therein is provided for the religious convictions of all persons of different persuasions,

i.e. all those belonging to a religion or dogma other than that of the author of the proselytism, and not exclusively those professing the principles of the Orthodox Church.

Furthermore, freedom of conscience in religious matters and of thought, protected as a human right by the present Constitution and by Articles 18 and 19 of the United Nations' Universal Declaration and Articles 9 and 14 of the European Convention on Human Rights, is not undermined by the above-mentioned criminal provision, since it does not sanction the holding of religious beliefs, which is completely free, but only any attempt to intrude on another person's religious beliefs with the aim of changing them. Such attempts are quite incompatible with religious freedom, which creates an obligation to respect the religious convictions of all those who hold different beliefs."

The court therefore dismissed the applicants' appeal.

II. RELEVANT DOMESTIC LAW

A. The right to religious freedom under the Greek Constitution

26. Article 13 of the Greek Constitution provides, as relevant:

"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."

B. The law on proselytism

27. Section 4 of Law no. 1363/1938, as amended by Law no. 1672/1939, provides as follows:

"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.

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 the other person's inexperience, trust, need, low intellect or naïvety.

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

There is a considerable body of case-law interpreting and applying this section: see the Court’s *Kokkinakis v. Greece* judgment of 25 May 1993, Series A no. 260-A, pp. 13–15, §§ 17–21.

PROCEEDINGS BEFORE THE COMMISSION

28. In their applications lodged with the Commission on 28 January 1994 (nos. 23372/94, 26377/94 and 26378/94), Mr Larissis, Mr Mandalarides and Mr Sarandis claimed that section 4 of Law no. 1363/1938 was too broad and vague to be compatible with the requirements of legal certainty under Articles 7, 9 § 2 and 10 § 2 of the Convention. In addition, they complained that their convictions for proselytism amounted to violations of their rights to freedom of religion and expression under Articles 9 and 10 of the Convention, and were discriminatory, contrary to Article 14 taken in conjunction with Article 9.

29. On 27 November 1995, the Commission ordered the joinder of the three applications under Rule 35 of its Rules of Procedure and declared them admissible.

30. In its report of 12 September 1996 (Article 31), the Commission expressed the opinion that there had been violations of Article 9 of the Convention in so far as the second applicant was convicted of proselytising the Baïramis family and their neighbours (unanimously) and in so far as the second and third applicants had been convicted of proselytising Mrs Zounara (twenty-four votes to five). However, it found no violation of Article 9 in so far as the first and second applicants were convicted of proselytising airman Antoniadis and the first and third applicants were convicted of proselytising airman Kokkalis (twenty-eight votes to one), and in so far as the first and third applicants were convicted of proselytising airman Kafkas (twenty-three votes to six).

It further concluded that there had been no violation of Article 7 of the Convention (twenty-eight votes to one) and that no separate issue arose under Article 10 of the Convention (unanimously) nor under Article 9 in conjunction with Article 14 in so far as the second applicant was convicted of proselytising the Baïramis family and neighbours and the second and third applicants were convicted of proselytising Mrs Zounara (unanimously). Finally, it concluded that there had been no violation of Articles 9 and 14 taken together in so far as the first and second applicants were convicted of proselytising airman Antoniadis and the first and third

applicants were convicted of proselytising airmen Kokkalis and Kafkas (unanimously).

The full text of the Commission's opinion and of the three separate opinions contained in the report is reproduced as an annex to this judgment.¹

FINAL SUBMISSIONS TO THE COURT

31. In their memorial and at the hearing before the Court, the Government maintained that no violation of the Convention had arisen in the applicants' case.

The applicants, however, asked the Court to find violations of Articles 7, 9, 10 and 14 of the Convention and to award them just satisfaction under Article 50.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

32. The applicants contended that the law against proselytism failed to comply with Article 7 of the Convention, which provides:

“1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.”

They argued that the Greek law violated the principle enshrined in Article 7 that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*), since it was impossible to predict whether certain types of behaviour would lead to a prosecution for proselytism. They contended that this deficiency in the law was evident both from the text of section 4(2) (see paragraph 27 above) and the jurisprudence which had arisen from it.

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of this judgment (in *Reports of Judgments and Decisions 1998*), but a copy of the Commission's report is available from the registry.

For example, the use of the words “in particular” implied that the subsequent definition was only one form of proselytism punishable under the statute, and other expressions employed, such as “direct or indirect” and “any kind of inducement or promise of an inducement or moral support or material assistance” were so broad and vague as to embrace almost any form of practical evangelism. The case-law which had grown out of section 4 (see the examples set out in the Court’s *Kokkinakis v. Greece* judgment of 25 May 1993, Series A no. 260-A, p. 13, § 18), showed that no one in Greece could possibly determine in advance whether or not his religious actions would constitute the offence of proselytism.

33. The Government and the Commission, referring to the above-mentioned *Kokkinakis* judgment, were both of the opinion that there had been no violation of this provision.

34. The Court recalls its finding in the above-mentioned *Kokkinakis* case (*op. cit.*, p. 22, § 52) that the definition of the offence of proselytism contained in section 4, together with the settled body of national case-law interpreting and applying it, satisfied the conditions of certainty and foreseeability prescribed by Article 7.

It is not persuaded that the position in Greek law has become any less clear in the period of under five years since that evaluation. Bearing in mind that 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 (*ibid.*, p. 19, § 40), it sees no reason to reverse its previous decision.

35. It follows that there has been no violation of Article 7 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

36. The applicants claimed that their prosecution, conviction and punishment for proselytism amounted to violations of Article 9 of the Convention, which states:

“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 in 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.”

The Government denied that there had been any such breach. The Commission found that there had been no violation with regard to the measures taken against the applicants for the proselytising of the airmen, although it found that Article 9 had been violated in so far as the proselytising of civilians was concerned (see paragraph 31 above).

37. The Court must consider whether the applicants' Article 9 rights were interfered with and, if so, whether such interference was "prescribed by law", pursued a legitimate aim and was "necessary in a democratic society" within the meaning of Article 9 § 2.

A. Interference

38. The Court considers, and indeed it was not disputed by those appearing before it, that the prosecution, conviction and punishment of the applicants for offences of proselytism amounted to interferences with the exercise of their rights to "freedom ... to manifest [their] religion or belief" (see the Kokkinakis judgment cited at paragraph 32 above, p.18, § 36).

B. "Prescribed by law"

39. The applicants, for the same reasons they had advanced in support of a finding of violation of Article 7 (see paragraph 32 above), contended that the measures taken against them were not "prescribed by law", as required by Article 9 § 2.

The Government and the Commission were of the contrary opinion, again relying on the Court's Kokkinakis judgment.

40. The Court recalls that the expression "prescribed by law" in Article 9 § 2 requires, *inter alia*, that the law in question must be both adequately accessible to the individual and formulated with sufficient precision to enable him to regulate his conduct (see, *mutatis mutandis*, the *Sunday Times v. the United Kingdom* (no. 1) judgment of 26 April 1979, Series A no. 30, p. 31, § 49).

41. It refers to its finding in the above-mentioned Kokkinakis case that the measures taken against that applicant under section 4 were "prescribed by law" (*op. cit.*, pp. 19–20, §§ 40–41). As the Court has already concluded in relation to Article 7 (see paragraphs 34–35 above), it is not satisfied that the position in Greek law has changed subsequently or that it should depart from its earlier assessment for any other reason.

42. In conclusion, the measures in question were "prescribed by law" within the meaning of Article 9 § 2.

C. Legitimate aim

43. The Government, with whom the Commission agreed, reasoned that the relevant action was taken against the applicants with the aim of protecting the rights and freedoms of others and also, as far as the measures taken following the proselytising of the airmen were concerned, with the aim of preventing disorder in the armed forces and thus protecting public safety and order.

The applicants made no particular submission in this connection.

44. Having regard to the circumstances of the case and, particularly, the terms of the national courts' decisions, the Court considers that the impugned measures essentially pursued the legitimate aim of protecting the rights and freedoms of others (see also the above-mentioned Kokkinakis judgment, p. 20, § 44).

D. "Necessary in a democratic society"

45. The Court emphasises at the outset that while religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to "manifest [one's] religion", including the right to try to convince one's neighbour, for example through "teaching" (*ibid.*, p. 17, § 31).

Article 9 does not, however, protect every act motivated or inspired by a religion or belief. It does not, for example, protect improper proselytism, such as the offering of material or social advantage or the application of improper pressure with a view to gaining new members for a Church (*ibid.*, p. 21, § 48).

46. The Court's task is to determine whether the measures taken against the applicants were justified in principle and proportionate. In order to do this, it must weigh the requirements of the protection of the rights and liberties of others against the conduct of the applicants (*ibid.*, p. 21, § 47). Since different factors come into the balance in relation to the proselytising of the airmen and that of the civilians, it will assess the two matters separately.

1. The proselytising of the airmen

47. The Government contended that the applicants had abused the influence they enjoyed as air force officers and had committed the acts in question in a systematic and repetitive manner. The measures taken against them were justified by the need to protect the prestige and effective operation of the armed forces and to protect individual soldiers from ideological coercion.

48. The applicants submitted that the practice of evangelism within a superior/subordinate relationship could not without more be equated to an

abuse of trust. They emphasised that the airmen were adults, able to die for their country, and that there was no evidence that the applicants had used their positions to coerce or override the wills of their subordinates. To interpret Article 9 so as to restrict evangelism to “equals” would be a severe limitation of religious freedom, both within the armed forces and in other contexts.

49. The Commission found that the interference could be justified as ensuring that the three airmen’s religious beliefs were respected, in view in particular of the special character of the relationship between a superior and a subordinate in the armed forces, which rendered the subordinate more susceptible to influence in a variety of matters including religious beliefs.

50. The Court observes that it is well established that the Convention applies in principle to members of the armed forces as well as to civilians. Nevertheless, when interpreting and applying its rules in cases such as the present, it is necessary to bear in mind the particular characteristics of military life and its effects on the situation of individual members of the armed forces (see the *Engel and Others v. the Netherlands* judgment of 8 June 1976, Series A no. 22, p. 23, § 54, and, *mutatis mutandis*, the *Grigoriades v. Greece* judgment of 25 November 1997, *Reports of Judgments and Decisions* 1997-VII, pp. 2589–90, § 45).

51. In this respect, the Court notes that the hierarchical structures which are a feature of life in the armed forces may colour every aspect of the relations between military personnel, making it difficult for a subordinate to rebuff the approaches of an individual of superior rank or to withdraw from a conversation initiated by him. Thus, what would in the civilian world be seen as an innocuous exchange of ideas which the recipient is free to accept or reject, may, within the confines of military life, be viewed as a form of harassment or the application of undue pressure in abuse of power. It must be emphasised that not every discussion about religion or other sensitive matters between individuals of unequal rank will fall within this category. Nonetheless, where the circumstances so require, States may be justified in taking special measures to protect the rights and freedoms of subordinate members of the armed forces.

52. The Court refers to the evidence adduced in the domestic proceedings (see paragraphs 8–10 above).

It notes that airmen Antoniadis and Kokkalis testified that the applicants approached them on a number of occasions in order to persuade them to convert and to visit the Pentecostal Church. Mr Antoniadis stated that he felt obliged to take part in the discussions because the applicants were his superior officers, and Mr Kokkalis said that the applicants’ approaches bothered him. As the Commission found, there is no evidence that the applicants used threats or inducements. Nonetheless, it appears that they

were persistent in their advances and that these two airmen felt themselves constrained and subject to a certain degree of pressure owing to the applicants' status as officers, even if this pressure was not consciously applied.

53. The Court notes that, contrary to the evidence given by his father at first instance, airman Kafkas testified before the Courts-Martial Appeal Court that the applicants did not apply any pressure to him to become a member of the Pentecostal Church and that he himself initiated the religious discussions that took place between them (see paragraph 10 above). However, the Appeal Court, having had the opportunity to assess the evidence, including Mr Kafkas's demeanour and credibility, upheld the first-instance court's decision that the first and third applicants had unlawfully taken advantage of the influence they had over Mr Kafkas due to their position and rank (see paragraphs 15, 18 and 22 above). The Court, considering that the domestic courts were better placed than itself to determine the facts of the case, and taking into account the matters referred to in paragraph 51 above, is of the view that Mr Kafkas, like the other two airmen, must have felt to a certain extent constrained, perhaps obliged to enter into religious discussions with the applicants, and possibly even to convert to the Pentecostal faith.

54. In view of the above, the Court considers that the Greek authorities were in principle justified in taking some measures to protect the lower ranking airmen from improper pressure applied to them by the applicants in their desire to promulgate their religious beliefs. It notes that the measures taken were not particularly severe and were more preventative than punitive in nature, since the penalties imposed were not enforceable if the applicants did not reoffend within the following three years (see paragraphs 16, 18, 20 and 24 above). In all the circumstances of the case, it does not find that these measures were disproportionate.

55. It follows that there has been no violation of Article 9 with regard to the measures taken against the first applicant for the proselytising of airmen Antoniadis, Kokkalis and Kafkas, those taken against the second applicant for the proselytising of airman Antoniadis or those taken against the third applicant for the proselytising of airmen Kokkalis and Kafkas.

2. The proselytising of the civilians

56. The Government reminded the Court that under section 4, only improper proselytism is punishable. They contended that the second and third applicants had systematically exploited the family problems and psychological distress suffered by the Bairamis family and Mrs Zounara and had thus applied unlawful pressure. Furthermore, the penalties imposed on them were not particularly onerous.

57. The Commission, with whom the applicants agreed, considered that the circumstances leading to the conviction of the second and third applicants for proselytising the Baïramis family and Mrs Zounara were similar to those of the Kokkinakis case (cited at paragraph 32 above), in that the “targets” of the proselytism were not military personnel and the domestic courts established the defendants’ guilt by reciting the words of section 4 without adequately explaining in what way the methods employed by the accused had been “improper”. It had not been satisfactorily demonstrated that their convictions on these counts were “necessary in a democratic society”.

58. The Court recalls that the second applicant was convicted under section 4 for preaching on a single occasion to the Baïramis family and their neighbours, following an incident when he had managed to calm a member of the Baïramis family who was in a delirious state. Together with the third applicant, he was also convicted for the proselytising of Mrs Zounara, whom they had attempted to convert on a number of occasions during a period when she was experiencing marital problems (see paragraphs 11, 12, 17 and 19 above).

59. The Court finds it of decisive significance that the civilians whom the applicants attempted to convert were not subject to pressures and constraints of the same kind as the airmen.

With regard to the Baïramis family and their neighbours, none of the evidence indicates that they felt obliged to listen to the applicant or that his behaviour towards them was improper in any way.

As for Mrs Zounara, it was not disputed before the domestic courts that she initially sought out the applicants in an attempt to understand the reasons behind her husband’s behaviour. Whilst it is clear that during the period she was in contact with them she was in a state of distress brought on by the breakdown of her marriage, the Court does not find it established that her mental condition was such that she was in need of any special protection from the evangelical activities of the applicants or that they applied improper pressure to her, as was demonstrated by the fact that she was able eventually to take the decision to sever all links with the Pentecostal Church.

60. For the above reasons, the Court does not consider that the second and third applicants’ convictions on the charges in question were justified in the circumstances of the case.

61. It follows that there has been a violation of Article 9 with regard to the measures taken against the second applicant for the proselytising of the Baïramis family and their neighbours and those taken against the second and third applicants for the proselytising of Mrs Zounara.

III. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

62. The applicants claimed that the measures taken against them had also interfered with their rights to freedom of expression, in breach of Article 10 of the Convention, which states, as relevant:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

63. The Commission, with whom the Government agreed, found that no separate issue arose under this provision.

64. Having regard to its scrutiny of this case in the context of Article 9, the Court also agrees that no separate issue arises in relation to Article 10.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 9

65. The applicants alleged that they had been the victims of discrimination contrary to Article 14 of the Convention, which 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.”

They contended that the law against proselytism was applied only to members of religious minorities in Greece, no follower of the Orthodox Church ever having been convicted of the offence under section 4.

66. The Government made no particular submission in relation to this complaint.

67. The Commission found that no separate issue arose under Articles 9 and 14 taken together in relation to the measures directed against the second and third applicants for the proselytising of the civilians. As far as the measures taken against the applicants for the proselytising of the airmen were concerned, since no material was provided to substantiate the complaint under Articles 9 and 14, it reached a finding of no violation.

68. The Court notes that the applicants alleged in their memorial that the Greek law against proselytism was applied in a discriminatory manner. However, they have not produced any evidence to suggest that an officer in the armed forces who attempted to convert his subordinates to the Orthodox Church in a manner similar to that adopted by the applicants would have been treated any differently. It follows that no violation of Articles 9 and 14 taken together has been established in connection with the proselytising of the airmen.

69. Having found a violation of Article 9 with regard to the measures taken against the second and third applicants for the proselytising of the Baïramis family and Mrs Zounara, the Court considers that no separate issue arises in that connection under Articles 9 and 14 taken together.

V. APPLICATION OF ARTICLE 50 OF THE CONVENTION

70. The applicants requested just satisfaction under Article 50 of the Convention, which 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. Non-pecuniary damage

71. The applicants sought 500,000 drachmas (GRD) each to compensate them for moral and material prejudice. This was the amount that the Court had awarded to Mr Kokkinakis in 1993 (*op. cit.*, p. 23, § 60).

72. At the hearing before the Court, the Government submitted that, in the event of the Court finding a violation, such finding would in itself constitute sufficient just satisfaction.

73. On the same occasion, the Commission’s Delegate commented that the fact that the domestic courts had not sought to take the Court’s case-law into account was a particular element to be taken into consideration under Article 50.

74. The Court observes that it has found violations of the Convention in respect only of the measures taken against the second applicant for the proselytising of the Baïramis family and the second and third applicants for the proselytising of Mrs Zounara (see paragraphs 58–61 above). The first applicant is not, therefore, entitled to any just satisfaction under Article 50.

Making its assessment on an equitable basis, it awards GRD 500,000 each to Mr Mandalarides and Mr Sarandis.

B. Costs and expenses

75. The applicants also requested 11,800 pounds sterling (GBP) to cover the legal costs and expenses of the proceedings before the Commission and Court in Strasbourg.

76. The Government considered the amount claimed to be excessive and submitted that the sum awarded should not exceed GRD 1,000,000.

77. The Court again notes in this context that it does not find any violation of the Convention in respect of the first applicant and that it finds in favour of the second and third applicants in connection with only one part of their complaints, namely in relation to the measures taken against them for the proselytising of civilians.

In the light of the above, it awards to the second and third applicants part of the costs and expenses claimed, in total GBP 6,000, together with any value-added tax which may be payable, less the amount received by way of legal aid from the Council of Europe.

C. Default interest

78. According to the information available to the Court, the relevant statutory rates of interest applicable at the date of adoption of the present judgment are 6% per annum in Greece and 8% per annum in the United Kingdom.

FOR THESE REASONS, THE COURT

1. *Holds* by eight votes to one that there has been no violation of Article 7 of the Convention;
2. *Holds* by eight votes to one that there has been no violation of Article 9 of the Convention with regard to the measures taken against the first, second and third applicants for the proselytising of airmen Antoniadis and Kokkalis;
3. *Holds* by seven votes to two that there has been no violation of Article 9 with regard to the measures taken against the first and third applicants for the proselytising of airman Kafkas;
4. *Holds* by seven votes to two that there has been a violation of Article 9 with regard to the measures taken against the second and third applicants for the proselytising of the civilians;

5. *Holds* unanimously that no separate issue arises under Article 10 of the Convention;
6. *Holds* unanimously that there has been no violation of Articles 9 and 14 of the Convention taken together in relation to the measures taken against the first, second and third applicants for the proselytising of the airmen;
7. *Holds* unanimously that no separate issue arises under Articles 9 and 14 taken together in relation to the measures taken against the second and third applicants for the proselytising of the civilians;
8. *Holds* by seven votes to two
 - (a) that the respondent State is to pay to the second and third applicants, within three months, in respect of compensation for non-pecuniary damage, 500,000 (five hundred thousand) drachmas each;
 - (b) that the respondent State is to pay to the second and third applicants, within three months, in respect of costs and expenses, 6,000 (six thousand) pounds sterling in total, together with any value-added tax which may be payable, less 11,149 (eleven thousand, one hundred and forty-nine) French francs to be converted into pounds sterling at the rate applicable on the date of delivery of the present judgment;
 - (c) that simple interest shall be payable from the expiry of the above-mentioned three months until settlement, at an annual rate of 6% in respect of the amount awarded in drachmas and at an annual rate of 8% in respect of the amount awarded in pounds sterling;
9. *Dismisses* unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 24 February 1998.

Signed: Feyyaz GÖLCÜKLÜ
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Mr De Meyer;
- (b) partly dissenting opinion of Mr Valticos, joined by Mr Morenilla;
- (c) partly dissenting opinion of Mr Repik;
- (d) partly dissenting opinion of Mr van Dijk.

Initialled: F. G.

Initialled: H. P.

CONCURRING OPINION OF JUDGE DE MEYER

(Translation)

The law in issue in the present case is contrary to the Convention in its very principle, since it directly encroaches on the very essence of the freedom everyone must have to manifest his religion.

However, in so far as it was applied to attempts to convert servicemen made by their superior officers, those officers cannot have been victims of an infringement of the freedom concerned since in the present case they had abused their position and rank.

PARTLY DISSENTING OPINION OF JUDGE VALTICOS,
JOINED BY JUDGE MORENILLA

(Translation)

The instant case, like various others, bears strong similarities, although attended by aggravating circumstances, to the *Kokkinakis v. Greece* case (judgment of 25 May 1993, Series A no. 260-A), which gave rise to a variety of opinions within the Court. I will not reiterate in detail the position I adopted on that occasion, but I refer the reader to it.

As in the *Kokkinakis* case, I maintain that any attempt going beyond a mere exchange of views and deliberately calculated to change an individual's religious opinions constitutes a deliberate and, by definition, improper act of proselytism, contrary to "freedom of thought, conscience and religion" as enshrined in Article 9 of the Convention. Such acts of proselytism may take forms that are straightforward or devious, that may or may not be an abuse of the proselytiser's authority and may be peaceful or – and history has given us many bloodstained examples of this – violent. Attempts at "brainwashing" may be made by flooding or drop by drop, but they are nevertheless, whatever one calls them, attempts to violate individual consciences and must be regarded as incompatible with freedom of opinion, which is a fundamental human right.

The measures taken nationally to prohibit and, if need be, punish them cannot therefore be regarded as amounting to breaches of the Convention.

In the instant case I concur in part of the Court's judgment and share its opinion that there has been no violation of the Convention as regards the punishment of the officers' attempted proselytising of soldiers who could have been influenced in part by the officers' authority over them.

However, I consider that even in the case of these officers' attempts to proselytise civilians, the penalties to which these gave rise were justified since the prestige of the officers' uniform may have had an effect even on civilians and, at all events, such deliberate acts of proselytism are contrary to the respect for freedom of conscience and religion guaranteed in the Convention.

PARTLY DISSENTING OPINION OF JUDGE REPIK

(Translation)

I regret that I am unable to agree with the majority about compliance with Article 7 or the conclusion that the interference with the applicants' exercise of their right to manifest their religion was "prescribed by law".

Compliance with Article 7

It is true that in the *Kokkinakis v. Greece* case (judgment of 25 May 1993, Series A no. 260-A, p. 22, §§ 52–53), the Court ruled that section 4 of Law no. 1363/1938 on the offence of proselytism was compatible with Article 7 of the Convention. However, the nature of the problem has changed since then.

As I understand it, the Court was saying in its judgment in that case that the Greek law in question satisfied the requirements of Article 7 of the Convention only with the assistance provided by the case-law of the Greek courts, which, being published and accessible, complemented the letter of section 4 and enabled individuals to regulate their conduct in this respect. The law itself was one of those which, to a greater or lesser extent, were couched in vague terms and whose interpretation and application depended on practice (*ibid.*, pp. 19 and 22, §§ 40 and 52).

However, albeit in connection with the necessity of the interference rather than its legality, the Court laid down the principle that there was a need to distinguish between Christian witness, which was the true form of evangelism and an essential duty of every believer and every Church, on the one hand, and improper proselytism, which was not compatible with the respect due to others' freedom of thought, conscience and religion, on the other. And it went on to add a proviso, namely that the criteria adopted by the Greek legislature were reconcilable with that distinction *if and in so far as* (my emphasis) they were designed only to punish improper proselytism (*ibid.*, p. 21, § 48). It was apparently up to the courts to draw this distinction by means of an appropriate interpretation of the terms of the law. In the case concerned, the Court noted that in finding Mr Kokkinakis guilty the Greek courts had done no more than reproduce the wording of the law, without sufficiently specifying in what way he had attempted to convince his neighbour by improper means (*ibid.*, p. 21, § 49).

I leave aside the question which suggests itself immediately, that is, whether in a system of written law the principle that offences and penalties must be defined by law is respected where the line separating what is criminal conduct from what is merely the normal exercise of a freedom guaranteed by the Constitution and the Convention is drawn by judges rather than by statute. Does that not put the judge in the position where he is required not just restrictively to interpret the law, but instead himself to

define an offence which, as drafted, is so broad as to embrace conduct which ought to remain lawful?

Although the case-law of the Greek courts, which was scrutinised by the Court in the Kokkinakis judgment (*op. cit.*, pp. 13–14, §§ 17–21), is not by any means of one piece and contains contradictions, the Court's expectation that conviction would ensue only in cases of improper proselytism could justifiably be based on the fact that in a judgment of 1975, in which it reversed its previous case-law, the Court of Cassation had removed the effects of certain vague terms in the law, notably the words "in particular". But that expectation has not been fulfilled. As the Commission observed in paragraphs 69–70 of its report and as its Delegate pointed out at the hearing, the Court of Cassation in the present case adopted an approach markedly different from the Court's, failing to distinguish between the use of proper and improper means and reverting to its previous case-law to the effect that the means set out in the law were not exhaustively listed and, a fact which to my mind is even more significant, emphasising the subjective elements of the offence, namely the so-called intrusion or attempt to intrude, directly or indirectly, on the religious beliefs of another with the aim of undermining those beliefs. The Court, by drawing a distinction between proper and improper means, has endeavoured to identify some objective element which, in a given individual's conduct, would be the only criterion capable of providing anything like a reliable indication whether a criminal offence has been committed. The Court of Cassation, on the other hand, has once more shifted its emphasis onto subjective elements, which do not provide a suitable criterion for distinguishing between proper and improper proselytism. In the instant case the Court has not taken into account this change of position on the part of the Court of Cassation.

Is it the fault of the law or rather of its interpretation and application by the Greek courts that the limits of its scope have again become considerably more obscure, as Mrs Liddy rightly pointed out in her dissenting opinion annexed to the Commission's report. The difficulty of applying the law in such a way so as not to encroach unduly on the freedoms guaranteed by the Convention is obvious. It is no less obvious that the domestic courts did not succeed in making up for the deficiencies of the law. The case-law, including the case-law of the highest Greek court, is very inconsistent; far too frequently there are prosecutions and even convictions for conduct about which there is nothing improper (for example, the distribution of religious literature). It is the Strasbourg Court which has striven, after the event, to draw certain distinctions in this area, but those distinctions do not flow necessarily from the law, and in fact the domestic courts still fail to discern them in it.

That being the case, a believer who tries to spread his religious beliefs can never be certain whether his conduct is illegal or not. The law is not

sufficiently precise and its effects are therefore not sufficiently foreseeable; it cannot guarantee legal certainty or equality of treatment, nor can it afford protection against arbitrary measures by the authorities responsible for applying it.

I am unable to conclude that the law in question satisfies the requirements of Article 7 and I accordingly consider that this provision has been breached.

Article 9

For the same reasons, I am not convinced that the interference with the applicants' exercise of their right to manifest their religion was "prescribed by law" within the meaning of Article 9 § 2.

There is nothing in Greek legislation or the case-law of the Greek courts pertaining to religious discussion in the armed forces. Nor do the decisions of the domestic courts concerned draw any distinction between proselytising of servicemen and proselytising of civilians. Once again it was the Court, following the Commission's example, which introduced this distinction after the event. I do not see how the applicants could have foreseen with the requisite degree of certainty that their conduct towards the servicemen would be illegal whereas their conduct towards other persons would not.

PARTLY DISSENTING OPINION OF JUDGE VAN DIJK

I felt unable to join the majority in one part of their conclusion, namely that concerning the compatibility with Article 9 of the Convention of the conviction of the first and third applicants for allegedly proselytising airman Kafkas.

I agree with the general reasoning, contained in paragraph 51 of the judgment, especially the statement that what would in the civilian world be seen as an innocuous exchange of ideas which the recipient is free to accept or reject, may, within the confines of military life, be viewed as a form of harassment or the application of undue pressure in abuse of power. However, in that same paragraph the Court points to the fact that not every discussion about religion or other sensitive matters between individuals of unequal rank will fall within this category.

Like Mr Schermers and the four other members of the Commission who attached a partly dissenting opinion to the Commission's report in this case, I am of the opinion that it should be possible to rebut the assumption of undue influence exercised by a higher ranking over a lower ranking person in the army. Whereas the testimonies of airmen Antoniadis and Kokkalis before the domestic courts confirmed the said assumption, airman Kafkas testified before the Appeal Court that he made the initial contact with the third applicant; that, later on, it was he who sought the first and third applicants' advice; and that no pressure was ever put on him (see paragraph 10 of the judgment).

The majority refer to the way in which the Appeal Court assessed this evidence, "including Mr Kafkas's demeanour and credibility", and accept it, "considering that the domestic courts were better placed than itself to determine the facts of the case" (see paragraph 53 of the judgment). The Court was competent, however, when assessing the proportionality of the limitation, to give its view on the fact that the Appeal Court, although it heard Mr Kafkas's own testimony, adopted the reasoning of the first-instance court which had not heard airman Kafkas as a witness but only his father. In that same context, the majority should also have given their view as to why airman Kafkas's "demeanour and credibility" were in issue – presumably because he had been converted to the Pentecostal Church in the meantime – while the same was not true for his father as a witness, although the latter may be assumed to have been displeased by his son's conversion. At the very least, it would seem unsatisfactory that the Appeal Court did not

deem it necessary to assess the statements of these two witnesses in relation to each other. All in all, I find it difficult to understand why the Court should accept, without any examination and supervision, the domestic courts' findings with regard to the proselytising of the airmen, while taking a critical view towards their findings concerning the proselytising of the civilians. I am of the opinion that, in these circumstances, the Court should not have deferred to the domestic courts on the question of the evidence of airman Kafkas and his father and should, in the absence of any counter-indication, have given greater weight to the testimony of the alleged victim of the proselytism than to that of a witness whose testimony was based upon hearsay information.

Since in the material submitted to the Court I cannot find any overriding evidence that airman Kafkas's discussions on religion and subsequent conversion were not prompted by his own free will, I cannot join the majority's conclusion that there was a pressing social need to prosecute and punish those whose guidance he sought on that road, albeit that they were his military superiors.