

**SADIK AHMET'İN YUNANİSTAN ALEYHİNE YAPTIĞI
BAŞVURUYA DAİR
AVRUPA İNSAN HAKLARI KOMİSYONU RAPORU**

**Application No. 18877/91
SADIK AHMET
against
Greece**

I. INTRODUCTION

1. The following is an outline of the case as submitted to the case as European Commission of Human Rights, and of the procedure before the Commission.

A. The application

2. The applicant is a Greek national, born in 1947 and resident in Komotini (Western Thrace, Greece). He was represented before the Commission by Prof. Dr. Tekin Akıllıoğlu, a lawyer practising in Ankara.

3. The application is directed against Greece. The respondent Government were represented by their Agent, Mr. Vassilios Kontolaimos of the Legal Council of State.

4. The case concerns the conviction and sentence of the applicant, one of the political leaders of the Moslem (Turkish) minority in Western Thrace. He was convicted of disrupting public peace by distributing, during his election campaign in October 1989, printed material referring to the Moslem population of Western Thrace as "Turks". He was sentenced to 15 months imprisonment. The applicant invokes Article 1.0 of the Convention.

B. The proceedings

5. The application was introduced on 11 July 1991 and registered on 27 September 1991.

6. On 3 May 1993 the Commission decided, pursuant to Rule 48 para. 2 (b) of its Rules of Procedure, to give notice of the application to the respondent Government and to invite the parties to submit written Observations on its admissibility and merits.

7. The Government submitted their observations on 8 October 1993, after one extension of the time-limit fixed for this purpose, and their supplementary observations on 29 October 1993. The applicant replied on 18 November 1993.

8. On 14 April 1994 the Commission decided to hold a hearing of the parties. On 20 June 1994 the President of the Commission granted the applicant legal aid for the representation of his case. The hearing was held on 1 July 1994. The Government were represented by their Agent, Mr. Vassilios Kontolaimos and by Ms. Vassilia Pelekou as adviser. The applicant was represented by Prof. Tekin Akıllıoğlu.

9. On 1 July 1994 the Commission declared admissible the applicant's complaint under Article 10 of the Convention. It declared inadmissible the remainder of the application.

10. The text of the Commission's decision on admissibility was sent to the parties on 13 July 1994.

11. After declaring the case admissible, the Commission, acting in accordance with Article 28 para. 1 (b) of the Convention, also placed itself at the disposal of the parties with a view to securing a friendly settlement. In the light of the parties' reaction, the Commission now finds that there is no basis on which such a settlement can be affected.

C. The present Report

12. The present Report has been drawn up by the Commission in pursuance of Article 31 of the Convention and after deliberations and votes, the following members being present:

MM C. A. MORGAARD, President
 H. DANELIUS
 C. L. ROZAKIS
 A. Ş. GÖZÜBÜYÜK
 H. G. SCHERMERS
 F. MARTINEZ
 L. LOUCAIDES
 J. - C. GEUS
 M. P. PELLONPAA
 M. A. NOWICKI

B. CONFORTI
I. BEKES
E. KONSTANTINOV
D. SVABY
G. RESS

13. The text of this Report was adopted on 4 April 1995 by the Commission and is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with Article 31 para. 2 of the Convention.

14. The purpose of the Report, pursuant to Article 31 of the Convention, is

- (i) to establish the facts, and
- (ii) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

15. A schedule setting out the history of the proceedings before the Commission is attached hereto as Appendix I and the Commission's decision on the admissibility of the application as appendix II.

16. The Full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

II. ESTABLISHMENT OF THE FACTS

A. The particular circumstances of the case

17. The applicant was elected Member of Parliament in June 1989 and was a potential candidate at the election on 5 November 1989. In October 1989, the applicant and B., another candidate, distributed leaflets which, inter alia, referred to the "Turkish minority" of Western Thrace.

18. The applicant and B. were subsequently charged with deceiving the electoral body (*exapatisi eklogaon*), an offence under article 162 of the Greek Penal Code, because in the leaflet they had created a climate of terror and anarchy among the Moslem population, they were further charged with "disrupting public peace" (*diataraxi koinis eirinis*), an offence under Article 192 of the Penal Code, by openly and indirectly by the use of the words "Turk(s)" or "Turkish" to identify the Moslems of Western Thrace.

19. On 25 January 1990 the applicant appeared before the First Instance Criminal Court (*Trimaless Phimmaleiodiketol*) of Rhodopi charged with the above offences. While the interrogation of witnesses was taking place the applicant requested that one of the judges be discharged because the way in which he put questions indicated that he was biased. This request was rejected.

20. The applicant alleges that at one stage he requested the proceedings to be adjourned because of the absence of his lawyer, but that his request was also rejected. However this event does not appear in the records of the hearing.

21. On 26 January 1990 the Court acquitted the applicant of deceit but found him guilty of disrupting public peace. It held that by the end of October 1989 the applicant had distributed to the population of Komotini and other places in the District of Rhodopi printed material which repeatedly contained the terms "Turk", "Turkish Moslem" and the "Turkish Moslem minority of Western Thrace", referring to the Greek Moslem citizens of Rhodopi; he had thereby aimed at creating feelings of hatred and enmity and at dividing the population; his purpose was to incite the population of each community to act violently against the other and to disrupt, as he actually did, the peaceful coexistence of the Greek Christian and the Greek Moslem communities.

22. The Court sentenced the applicant to 18 months' imprisonment, not convertible into a fine. His request to the sentence pending his eventual appeal was rejected by the Court, on the ground, *inter alia*, that the applicant was dangerous and that there was a risk that he would flee to Turkey.

23. The applicant was detained from 26 January to 30 March 1990.

24. On 27 January 1990 the applicant appealed against the above judgment.

25. By the end of January 1990 violence erupted in Komotini which resulted in damage to numerous businesses and shops, A Christian was killed by a Moslem in a hospital,

26. On 30 March 1990 the Court of Appeal (Trimaless Efeteio) of Patras confirmed the first instance judgment, finding the applicant guilty of disrupting public peace,

27. The Court stated that the applicant had deliberately described the Greek Moslems of Western Thrace as "Turks", although he knew that the 1923 Treaty of Lausanne refers to and recognises only a religious (Moslem) minority and not a Turkish (ethnic) minority. It held that the applicant aimed at creating feelings of hatred and hostility within the Moslem community towards the Greek Christians, and that he had succeeded in disrupting public peace in Komotini, as well as provoking violent events in this town. However, the Court of Appeal reduced the sentence to 15 months' imprisonment, convertible to a fine.

28. On 8 April 1990, after his release from prison, the applicant was re-elected to the Greek Parliament.

29. On 24 October 1990 the applicant appealed to the Court of Cassation (Areios Pagos).

30. In His appeal he complained that the charges against him were vague and that the courts should have declared the prosecution case inadmissible. He further complained that judgment of the Court of Appeal was not sufficiently reasoned as required by the Constitution and the law. In this respect he complained that the Court did not indicate in what way the use of the word "Turk" or "Turkish" was capable per se of creating a climate of hatred or of disrupting public peace, He also complained that the judgment gave no concrete examples of any event having actually occurred by the end of October 1989 which could have been regarded as a genuine disruption of public peace or a disturbance of public order.

31. On 15 February 1991 the Court of Cassation rejected the appeal. The Court found that the judgment of the Court of Appeal had been sufficiently reasoned.

B. The relevant domestic law

32. Article 192 of the Greek Penal Code provides;

"Any person who publicly and in any manner whatsoever provokes or incites the citizens to mutual assault or discord and thus disrupts public peace, shall be liable to imprisonment for a term not exceeding two years, unless another provision imposes a more severa sentence.

III. OPINION OF THE COMMISSION

A. Complaint declared admissible

33. The Commission has declared admissible the applicant's complaint that his conviction of having disrupted public peace, by distributing printed material referring to the Moslem population of Western Thrace as "Turks", violated his rights under Articles 9, 10, 11 and 14 of the Convention. As his conviction involved his writings, the Commission considered that the main issue arose under Article 10 of the Convention.

B. Point at isaue

34. The Commission is called upon to consider whether or not there has been a violation of Article 10 of the Convention.

C. As regards Article 10 of the Convention

35. The relevant parts of Article 10 of the Convention provide as follows.

"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 authorities and regardless of frontiers...

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..."

36. In the present case the Commission finds that there has been an interference by a public authority with the exercise of the applicant's freedom of expression within the meaning of Article 10. This interference resulted from his conviction and sentence to 18 months' imprisonment by the Criminal Court of Rhodopi.

37. The Commission also finds that the interference was in accordance with law as it was based on Article 192 of the Greek Penal Code. The restriction furthermore pursued a legitimate aim covered by Article 10 para. 2 of the Convention, namely the prevention of disorder.

38. Accordingly, the key issue in the present case which remains to be examined is whether the restriction complained of could reasonably be considered to be necessary in a democratic society" as required by Article 10 para. 2 of the Convention.

39. The applicant stresses the key role played by freedom of expression in a democratic society and considers that the importance of this freedom is even greater for an elected representative whose mandate is to act as a spokesman for the opinions and concerns of his constituents.

40. The Applicant considers that his conviction and sentence constituted a reprisal for his assertion of his Turkish ethnic origin. He submits that the use of the word "Turks" to identify the Moslems of Western Thrace is frequent even in schoolbooks, in administrative documents and in judgments. He further submits that there was no evidence of disruption of public order. There was thus no pressing social need for his conviction and sentence.

41. The applicant concludes that his conviction and sentence were a disproportionate interference with his freedom of expression.

42. The Government stress that freedom of expression has limits which the applicant overstepped. The Treaty of Lausanne refers to "Moslems" and not to "Turks" The applicant deliberately chose to use expressions which aimed at creating feelings of hatred and hostility within the Moslem community towards the Greek Christians and, therefore, abused his right to freedom of expression.

43. The Government further submit that the applicant's conviction and sentence were decided by the competent domestic courts, which found him guilty of the offence provided for in Article 192 of the Greek Penal Code, and argue that every conviction

which is decided in accordance with law is compatible with Article 10 para. 2 of the Convention.

44. The Government thus find, having regard to the State's margin of appreciation, that the interference with the applicant's right to freedom of expression was necessary in a democratic society within the meaning of Article 10 para. 2 of the Convention.

45. The Commission recalls that the adjective "necessary" within the meaning of Article 10 para. 2. is not synonymous with "indispensable" or as flexible as "reasonable" or "desirable" but implies the existence of a pressing social need (see, *inter alia*, Eur. Court H. R., Barthold judgment of 25 March 1985, Series A no. 90, pp. 24-24, para 55).

46. It is true that the initial responsibility for securing Convention rights and freedoms lies with each Contracting State. Accordingly, Article 10 para. 2 of the Convention leaves the Contracting State a certain margin of appreciation in assessing whether such a need exists, but this margin goes hand in hand with a European supervision, embracing both the law and the decisions applying it, even those given by independent courts (see, *inter alia*, Eur. Court H. R., Observer and Guardian judgment of 26 November 1991, Series A no. 216, p. 30, para. 59).

47. The Convention organs' task, in exercising their supervisory function is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith, what the Convention organs have to do is to look at the interference complained of in the light of the case as a whole and determine whether it was proportionate to the legitimate aim pursued and whether the reasons adduced by the national authorities to justify it were relevant and sufficient (Eur. Court H. R., Barthold judgment, *op. cit.*).

48. In doing so, the Convention organs have to satisfy themselves that the national authorities did apply standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts (Eur. Court H. R., Jersild judgment of 23 September 1994, Series A no. 298, para. 33).

49. In the present case, the Commission has therefore examined whether there was a pressing social need to convict and sentence the applicant for having distributed printed material referring to the Moslem population of Western Thrace as "Turks" and whether the conviction and sentence were proportionate to the aim pursued.

50. The Commission recalls that freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of the basic conditions for its progress and for the development

of everyone. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that shock, offend or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society" (see, *inter alia*, Eur. Court H. R., *Vereinigung Demokratischer Soldaten Osterreichs and Gubi* judgment of 19 December 1994, to be published in Series A no. 302, para. 36).

51. This being so, the Commission emphasises the crucial importance of freedom of expression for an elected representative of the people who represents his electorate, draws attention to their preoccupations and defends their interests (Eur. Court H. R., *Castells* judgment of 23 April 1992, Series A no. 236, p. 22, para. 42). Accordingly, the institution of criminal proceedings for statements made in the context of an electoral campaign is justified only insofar as it is not possible for the State to react in a suitable and adequate manner by way of the means usually available to democratic States (see *Castells v. Spain*, Comn. Report 8. 1. 91, para. 69, Eur. court H. R., *op. cit.*),

52. In the present case, the Commission notes that the applicant has been convicted and sentenced for calling "Turks" the people belonging to the Moslem minority of Western Thrace.

53. The Commission assumes that, in order to avoid rifts between the Christian and Moslem population of Western Thrace and to maintain their peaceful coexistence, moderation in political discussions may be desirable. However, it cannot find that, in the circumstances of this case, and in the absence of clear elements of incitement to violence, the imposition of a prison sentence for the use in public, namely in an election campaign, of the term "Turk" in respect of the Moslem minority in that area can reasonably be regarded as a "necessary" measure in a democratic society.

54. Accordingly, the Commission concludes that the reasons advanced by the Government do not suffice to show that the interference with the applicant's freedom of expression was proportionate to the legitimate aim pursued. Thus it was not justified under Article 10 para. 2 of the Convention.

CONCLUSION

53. The Commission concludes, unanimously, that in the present case there has been a violation of Article 10 of the Convention.

Secretary to the Commission

President of the Commission

(H. C. KRUCER)

(C. A. NORGAARD)

APPENDIX I**HISTORY OF THE PROCEEDINGS**

Date	Item
11 July 1991	Introduction of application
27 September 1991	Registration of application
Examination of admissibility	
3 May 1993	Commission's decision to communicate the case to the respondent Government and to invite the parties to submit observations on admissibility and merits
8 and 29 October 1993	Government's observations
18 November 1993	Applicant's observations in reply
14 April 1994	Commission's decision to hold a hearing
20 June 1994	President's grant of legal aid
1 July 1994	Hearing on admissibility and merits
1 July 1994	Commission's decision to declare application in part admissible and in part inadmissible
8 July 1994	Commission's adoption of text of decision on admissibility
Examination of the merits	
13 July 1994	Decision on admissibility transmitted to parties
3 December 1994	Examination of state of proceedings
4 April 1995	Adoption of Report

APPENDIX II**DECISION OF THE COMMISSION****AS TO THE ADMISSIBILITY OF**

Application No. 18877/91

by Sadık AHMET

against Greece

The European Commission of Human Rights sitting in private on 1st July 1994,
the following members being present:

MM. C. A. NORGAARD, President
 F. ERMACORA
 A. S. GÖZÜBÜYÜK
 H. G. SCHERMERS
 H. DANELIOS
 F. MARTINEZ
 C. L. ROZAKIS
 L. LOUCAIDES
 J. -C. GEUS
 M. P. PELLONPAA
 B. MARXER
 G. B. REFFI
 M. A. NOWICKI
 B. CONFORTI
 I. BEKES
 E. KONSTANTINOV
 D. SVABY
 G. RESS

MR. H. C. KRUGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms,

Having regard to the application introduced on 11 July 1991 by Sadık AHMET against Greece and registered on 27 September 1991 under file No. 18877/91,

Having regard to,

-reports provided for in Rule 47 of the Rules of Procedure of the Commission,

- the observations submitted by the respondent Government on 8 and 29 October 1993 and the observations in reply submitted by the applicant on 18 November 1993,

- the parties' oral submissions at the hearing on 1st July 1994,

Having deliberated,

Decides as follows,

THE FACTS

The applicant is a Greek national born in 1947. He is a physician and resides in Komotini.

The facts of the case as submitted by the parties may be summarised as follows,

The applicant was elected Member of Parliament in June 1989 and was a potential candidate at the election on 5 November 1989. In October 1989, the applicant and B., another candidate, distributed leaflets which, inter alia, referred to the "Turkish minority" of Western Thrace.

The applicant and B. were subsequently charged with misinforming the electoral body, an offence established by Article 162 of the Greek Penal Code, because in the leaflet they had stated that the candidates of the main political parties had created a climate of terror and anarchy among the Moslem population. They were further charged with "disrupting public peace" (*diataraxi koinis sirinis*), an offence under Article 192 of the Penal Code, by openly and indirectly inciting citizens to violence or by creating rifts among the population by the use of the words "Turk(s)" or "Turkish" to identify the Moslems of Western Thrace.

On 25 January 1990 the applicant before the Criminal Court (*Trimeles Plimmi-leiodikei* of Rhodopi) charged with the above offences. While the interrogation of witnesses was taking place the applicant requested that one of the judges be discharged because the way in which he put questions indicated that he was biased. This request was rejected.

The applicant alleges that at one stage he requested the proceedings to be adjourned because of the absence of his lawyer, but that his request was also rejected. However this event does not appear in the records of the hearing.

On 26 January 1990 the applicant was acquitted of misinformation but found guilty of disrupting public peace. The Court held that by the end of October 1989 the applicant had distributed to the population of Komotini and other places in the district of Rhodopi printed material which repeatedly contained the terms "Turk", "Turkish Moslem", and the "Turkish Moslem minority of Western Thrace", referring to the Greek Moslem citizens of Rhodopi. The Court held that the applicant had thereby aimed at

creating feelings of hatred and enmity and at dividing the population. According to the judgment, his purpose was to incite the population of each community to act violently against the other and to disrupt, as he actually did, the peaceful co-existence of the Greek Christian and the Greek Moslem communities.

The applicant was sentenced by the Criminal Court to 18 months' imprisonment, not convertible into a fine. His request to the Court to suspend the sentence pending his eventual appeal was rejected, *inter alia*, on the ground that the applicant was dangerous and that there was a risk that he would flee to Turkey.

The applicant was detained from 26 January to 30 March 1990.

On 27 January 1990 the applicant appealed against the above judgment.

By the end of January 1990 violence erupted in Komotini which resulted in damage to numerous businesses and shops. A Christian was killed by a Moslem in a hospital.

On 30 March 1990 the Court of Appeal (Trimeles Efetsio) of Patras confirmed the first instance judgment, declaring the applicant guilty of disrupting public peace.

The Court found that the applicant had deliberately described the Greek Moslems of Western Thrace as "Turks", although he knew that the 1923 Treaty of Lausanne refers and recognises only a religious (Moslem) minority and not a Turkish (ethnic) minority. It held that the applicant aimed at creating feelings of hatred and hostility within the Moslem community towards the Greek Christians, and that he had succeeded in disrupting public peace in Komotini, as well as creating violent events in this town. However, the Court of Appeal reduced the sentence to 15 months' imprisonment, convertible to a fine.

On 8 April 1990, after his release from prison, the applicant was re-elected to the Greek Parliament.

On 24 October 1990 the applicant appealed to the Court of Cassation [Areios Pagos].

In his appeal he complained that the charges against him were vague and that the courts should have declared the prosecution case inadmissible. He further complained that the judgment of the Court of Appeal was not sufficiently reasoned as required that the Court did not indicate in what way the use of the word "Turk" or "Turkish" was capable of creating a climate of hatred or of disrupting public peace. He also complained that the judgment gave no concrete examples of any event having actually occurred by the end of October 1989 which could have been regarded as a genuine disruption of public peace or a disturbance of public order.

On 15 February 1991 the Court of Cassation rejected the appeal. The Court found that the judgment of the Court of Appeal had been sufficiently reasoned.

COMPLAINTS

1. The applicant alleges that he was unlawfully deprived of his liberty between 26 January and 30 March 1990 and invokes Article 5 paras. 1, 3 and 4 of the Convention.

2. The applicant complains under Article 6 para. 1 of the Convention that insufficient reasons were given by the courts to justify his conviction.

3. The applicant complains that the proceedings against him were not fair and invokes Article 6 paras. 1, 2, 3 and Article 14 of the Convention.

4. The applicant submits that his conviction for disrupting public peace, by distributing printed material referring to the Moslem population of Western Thrace as "Turks" amounts to violation of his freedom of thought, expression and assembly, and is discriminatory. He invokes Articles 9, 10, 11 and 14 of the Convention.

5. Finally, the applicant complains, under Article 3 of protocol No. 1, that due to his imprisonment in February and March 1990 he was unable to participate in the campaign for the legislative election of April 1990.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 11 July 1991 and registered on 27 September 1991.

On 3 May 1993 the Commission decided to bring the application to the notice of the respondent Government and to invite them to submit written observations on the admissibility and merits of the application, limited observations on 29 October 1993.

The applicant submitted observations in reply on 18 November 1993.

On 14 April 1994 the Commission decided to hear the parties as to the admissibility and merits of the case.

At the oral hearing, which was held on 1 July 1994, the parties were represented as follows:

For the government:

Mr. Vassilios KONTOLAIMOS

Legal Assessor at the Legal
Council of State, Agent

Ms. Vassilia PELEKOU

Legal Representative at the Legal
Council of State, Adviser

For the applicant:

Prof. Tekin AKILLIOĞLU

Lawyer practising in Ankara.

The applicant was also present at the hearing.

THE LAW

1. The applicant, who was detained between 26 January and 30 March 1990, complains that this deprivation of liberty was contrary to Article 5 paras, 1, 3 and 4 of the Convention.

Article 5 para. 1 of the Convention guarantees the right to liberty and security of person, subject to certain exceptions, such as the lawful detention of a person after conviction by a competent court, within the meaning of sub-paragraph (a) of the provision. Article 5 paras. 3 and 4 provide certain guarantees of judicial control of provisional release or detention on remand pending trial.

The Commission notes that the applicant was detained after having been sentenced by the first instance court to 18 months imprisonment. He was released after the Court of Appeal reviewed this sentence, reducing it to 15 months' imprisonment, convertible to a fine. The Commission finds that the applicant was deprived of this liberty "after conviction by a competent court" within the meaning of Article 5 para. 1 1a) of the Convention.

The Commission also finds no evidence in the case to suggest an infringement of paragraphs 3 and 3 of Article 5: The applicant was not detained on remand prior to his trial and the judicial control of the lawfulness of his subsequent detention after conviction was provided by the first instance court (cf. Eur. Court H.R., *De Wilde, Coms and Versyp* judgment of 18 June 1971, Series A no. 12., p. 40, para. 76).

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 27 para. 2 of the Convention.

2. The applicant next complains under Article 6 para: 1 of the Convention of an unfair hearing in the determination of the criminal charges against him, in that, allegedly, insufficient reasons were given by the courts to justify his conviction.

However, again, the Commission finds no evidence in the case to substantiate this complaint.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

3. The applicant further complains of the attitude of some of the judges and of not having received a written copy of the first instance judgment in time for the preparation of his appeal. He alleges that witness on this behalf were not duly heard by the courts.

The applicant invokes Article 6 paras. 1, 2, 3 (b) and (d) of the Convention, which provides certain guarantees to the defence in a criminal case, and Article 14, which prohibits discrimination in the securement of Convention rights and freedoms.

However, the Commission is not required to decide whether the facts alleged by the applicant disclose any appearance of a violation of these provisions. Under the terms of Article 26 of the Convention, "the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law".

For this condition to be fulfilled, it is not sufficient for the applicant merely to have presented his case to the various courts competent to deal with it. The complaint made before the Commission must also have been raised, at least in substance, during the proceedings in question. On this point, the Commission refers to its constant case-law (see, for example, No. 1216/86, Dec. 12.10.88, *Agneessens v. Belgium*, D.R. 58 p. 63).

In the present case, the Commission notes that none of these complaints has been raised either formally or even in substance during the proceedings before the Court of Cassation. In addition, the examination of the case has disclosed no circumstance which, according to the generally recognised principles of international law, might have absolved the applicant from raising these complaints during the cassation proceedings.

It follows that this part of the application must be rejected for non-exhaustion of domestic remedies, in accordance with Article 27 para. 3 of the Convention.

4. The applicant also complains that his conviction for disrupting public peace, by distributing printed material referring to the Moslem population of Western Thrace as "Turks", amounts to a violation of his freedom of thought, expression and assembly, and is discriminatory. He invokes Articles 9, 10, 11 and 14 of the Convention, which guarantee these freedoms and prohibit discrimination respectively.

The Commission notes that the applicant's conviction involved his writings. Consequently, it is essentially the exercise of the applicant's freedom of expression with which there has been an interference.

The relevant part of Article 10 of the Convention provides as follows:

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

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...".

The respondent Government considers that the applicant submitted his application out of time on 27 September 1991, which is more than six months after the date on which the final decision regarding the applicant's case was given by the Court of Cassation on 15 February 1991.

However, the application was lodged with the Commission on 11 July 1991, five months after the cassation decision, and therefore within the six month time-limit provided for by Article 26 of the Convention.

The Government next submits, in respect of Article 26 of the Convention, that the applicant has not exhausted domestic remedies because at no time at first instance, on appeal or in cassation did the applicant raise the issues under the Convention, even in substance.

In reply the applicant maintains that the breach of which he is complaining consists of a continuing violation, and that therefore he was absolved from the obligation of raising the complaint before the Greek courts.

The Commission observes that Article 26 of the Convention "should be applied with some degree of flexibility and without excessive formalism, it is sufficient that the complaints intended to be made subsequently before the Convention organs should have been raised at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law" (eur. Court H.R. *Castalis* judgment of 23 April 1992, Series A No. 236, p. 19, para. 27).

It is true that before the Court of Cassation the applicant did not rely expressly on Article 10 of the Convention, which is directly applicable under Greek law, nor did he invoke the provisions of Article 14 of the Greek Constitution, which also guarantees the right to freedom of expression, however, while basing his case on the narrower domestic criminal law provision of Article 192 of the Greek Penal Code, the applicant claimed the right to use the words "Turk(s)" or "Turkish" to identify the Moslems of Western Thrace.

The Commission considers that this indicates an issue falling within the scope of freedom of expression. In claiming a right to use these terms the applicant was formulating a complaint which was linked to the alleged violation of Article 10 of the Convention. Therefore, "he provided the national courts with the opportunity which is in principle intended to be afforded to Contracting States by Article 26, namely the opportunity

of putting right the violations alleged against them" (Eur. Court H.R., Guzzardi judgment of 6 November 1980, Series A no. 39, p. 27, para. 72).

Accordingly, the Commission considers that the applicant did invoke before the Greek courts, at least in substance, the complaints relating to Article 10 of the Convention which he now puts to the Commission. He may therefore be said to have exhausted domestic remedies.

The Commission concludes that the applicant has complied with the requirements of Article 26 of the Convention.

As regards the merits of the complaint, the Government maintains that the interference was prescribed by law, in this case Article 192 of the Penal Code. The Government asserts that the proceedings instituted against the applicant and his ensuing conviction pursued the legitimate aim of protecting public order, within the meaning of Article 10 para. 2 of the Convention.

The applicant does not dispute the existence of a legal basis for his conviction, but he maintains that the conviction and punishment inflicted upon him were without any legitimate purpose under the Convention and alleges that they constituted a kind of reprisal for his assertion of his Turkish ethnic origin. He also maintains that his conviction and the penal sanctions inflicted upon him were not necessary in a democratic society. The importance of this freedom is even greater for an elected representative whose mandate is to act as spokesman for the opinions and concerns of his constituents.

The Commission considers that the applicant's complaints, that his conviction for disrupting public peace amounts to a violation of his rights under the Convention, raise complex issues of fact and law, the determination of which should depend on a full examination of the merits. These complaints cannot therefore be regarded as manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention, and no other ground for declaring this part of the case inadmissible has been established.

5. Finally, the applicant complains, under Article 3 of Protocol No. 1, that he was prevented from participating in the campaign for the legislative election of April 1990 because of his detention.

Article 3 of Protocol No. 1 provides for free elections under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

The Commission notes that this matter was not submitted to the competent court, which is the Special Supreme Court, and consequently this part of the application is inadmissible for non-exhaustion of domestic remedies.

It follows that this part of the application must be rejected in accordance with Article 27 para. 3 of the Convention.

For these reasons, the Commission, by a majority.

DECLARES ADMISSIBLE, without prejudging the merits of the case, the applicant's complaint that his conviction for having disrupted public peace amounts to a violation of his rights set forth in the Convention;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Commission
(H.C. KRUGER)

President of the Commission
(C.A. NORGAARD)