

GREECE

Freedom of religion and expression on trial -- the case of Mehmet Emin Aga, Mufti of Xanthi.

Summary

Since 1993 Mehmet Emin Aga, Mufti of Xanthi, has been repeatedly charged with "usurping [the function] of a religious minister", an offence under Article 175 of the Greek Penal Code, which provides a sentence of up to one year's imprisonment or a fine. On 2 and 30 June 2000, he will stand trial in Xanthi on four counts of these charges. These trials are only four in a series of 14 (at the time of writing) on similar charges which have been brought against him as a result of his "sending out to the Muslims of Xanthi written messages of a religious content" to mark religious festivals.

Amnesty International's concern in this case is based on its belief that by sending leaflets with religious messages to the Muslim inhabitants of Xanthi, which he signed as the Mufti of Xanthi, Mehmet Emin Aga was exercising his right to freedom of religion and expression. Amnesty International considers that Greece is acting in violation of its obligations under international human rights treaties which safeguard the right to freedom of thought, conscience and religion. Amnesty International therefore calls on the authorities to drop all charges against him. If he is imprisoned on account of those charges, Amnesty International will adopt Mehmet Emin Aga as a

prisoner of conscience and call for his immediate and unconditional release.

1. Mehmet Emin Aga

Mehmet Emin Aga is the son of the former Mufti of Xanthi, Mustafa Hilmi Effendi. Though himself a Pomak, Mustafa Hilmi Effendi played a crucial role in the efforts of the Muslim inhabitants of Western Thrace to be granted the right by the Greek authorities to be officially recognized as members of the Turkish ethnic minority if they so wished. Born in 1932 in Echinós, District of Xanthi, Mehmet Emin Aga first trained and worked as a teacher in Komotini and Xanthi until he was allegedly dismissed from his post on grounds of "Greek enmity" in 1978. He then worked as secretary to the Mufti of Xanthi and entered politics. He presented himself as an independent candidate in the Greek parliamentary elections of 1985 and 1989. On the death of his father in 1990, Mehmet Emin Aga was first appointed "naip" (temporary mufti) on 16 February 1990. He was then elected Mufti, reportedly among four candidates by way of a show of hands taken in 52 mosques of the district of Xanthi on 18 August 1990. However, in December 1990 following the resignation of the Mufti of Rodopi (who had been appointed *ad interim* by the state in 1985), two independent Muslim Members of Parliament requested the state to organize official elections for new Muftis both in Xanthi and in Rodopi, as provided by the then existing law¹. Faced

¹ Law 2345/1920 provided that the Muftis were directly elected by the Muslims who had the right to vote in the national elections and who resided in the Prefectures in which the Muftis would serve. The elections were to be organized by the State and theological school graduates had the right to be candidates. Article 6, paragraph 8, of the law provided for the promulgation of a royal decree to make detailed arrangements for the

with a lack of response from the authorities they decided to organize elections by show of hands in the mosques of the two towns. Mehmet Emin Aga was elected in Xanthi while Ibrahim _erif was elected by his community as their Mufti in Rodopi on 28 December 1990, four days after an emergency decree granted the state the right to appoint muftis.

elections of the Muftis. [in European Court of Human Rights, case of _erif v. Greece, application no. 381 78/97].

According to this decree of 24 December 1990, which resulted in a change in law on 4 February 1991 (Law 1920/1991 which was retroactive), appointments are based on the recommendations of a committee of Muslim notables selected by the government. This committee proposes a list of suitable candidates to the Minister of Education and Religious Affairs. The mufti is appointed by presidential decree issued upon proposal from the Minister of Education and Religious Affairs. The Greek authorities' argument is that as the muftis, in addition to their religious duties, carry out restricted judicial functions (in civil and domestic matters under Muslim religious law) for which the state pays them, they should be appointed by the state. However, in accordance with the Treaty of Lausanne², some members of the Turkish community have continued to elect their religious leaders and have refused to recognize the mufti appointed by the state. This has led to a situation where some muftis have been appointed by the State against the will of the community. In Xanthi and Komotini, for example, there are two muftis, one elected by the community and one appointed by the Greek authorities. In 1996 the then United Nations Special Rapporteur on Religious Intolerance

² The Treaty of Lausanne signed in 1923 after the 1920-22 war between Greece and Turkey provided not only for the exchange of populations between the two countries, but also guarantees, in both Turkey and Greece, under its Articles 37 through to 45, the protection of life and liberty without regard to birth, nationality, language or religion; free exercise of religion; freedom of movement and emigration; equality before the law; the same civil and political rights enjoyed by the majority; free use of any language in private, in commerce, in religion, the press and publications, at public meetings and in the courts; the right to establish and control charitable, religious and social institutions and schools, primary schools in which instruction is given in both languages; and full protection for religious establishments and pious foundations. [in *Destroying Ethnic Identity: the Turks of Greece*, Helsinki Watch, 1990 pp6-7 and Appendixes A and B (Treaty of Lausanne)].

concluded in his report³ that he "believe[d] it necessary for the Greek authorities to comply fully and in good faith with the Treaty of Lausanne and with the country's international undertakings. He also recalls the need to refrain from interfering in the affairs of a religion, apart from the restrictions provided for in international law, and calls for respect for the traditions of each religious group within the framework of internationally recognized norms".

Although a new Mufti was appointed by the authorities in Xanthi, Mehmet Emin Aga continued his activities. Since 1993, however, criminal charges have repeatedly been brought against him for "Usurping [the function] of a religious minister", an offence under Article 175 of the Greek Penal Code⁴, which provides a maximum sentence of one year's imprisonment. He was convicted on these charges and sentenced to an overall total of 132 months' imprisonment in first instance, which after appeal has been reduced to a total of 94 months' imprisonment. After one of his sentences was confirmed on appeal in 1995, Mehmet Emin Aga served six months of a 10-month prison sentence. For all other sentences, as allowed under Greek law, he took the option to pay a sum of money in lieu of

³ United Nations: A/51/542/add.1 of 7 November 1996, interim report on the elimination of all forms of religious intolerance concerning a visit to Greece, prepared by Mr Abdelfattah Amor, Special Rapporteur of the Commission of Human Rights, pursuant to General Assembly resolution 50/183 of 22 December 1995.

⁴ Article 175 (2) of the Greek Penal Code forbids anyone to practise law or exercise the functions of a minister of the Greek Orthodox Church or that of another religion known in Greece without justification. Article 175 (1) provides a sentence of up to one year's imprisonment or the payment of a fine.

serving terms of imprisonment (See appendix for a detailed list of all the trials against Mehmet Emin Aga).⁵

With one exception, the Supreme Court, at the end of 1999, had rejected Mehmet Emin Aga's appeals and upheld a total of 38 months' sentences. Three further cases (which amount to a total of 31 months' imprisonment) are currently pending at the Supreme Court. Moreover, there are also four cases at the Appeal Court stage, which amount to a total of a further 25 months' imprisonment which remain pending. Mehmet Emin Aga was also charged in 1998 with four similar counts of the same offence, for which he is to stand trial in the year 2000. If given the maximum sentence in each case, he could face up to an additional four years' imprisonment.

Each conviction and appeal relates to his "sending out to the Muslims of Xanthi written messages of a religious content" to mark religious festivals; "present[ing] himself as Mufti" by writing "Mufti's office of Xanthi" at the beginning of the messages; and signing them as "Mufti of Xanthi, Mehmet Emin Aga" thus leading to the charge that he had "deliberately carried out duties which, by their nature, apply exclusively to the legitimate Mufti".

II. The European Court for Human Rights' decision in the case of Ibrahim _erif v. Greece

⁵ Compiled by Greek Helsinki Monitor, 3 December 1999

In December 1999 a chamber of the European Court of Human Rights issued a judgement in a case very similar to that of Mehmet Emin Aga. It relates to Ibrahim _erif, Mufti of Rodopi who, having exhausted all domestic remedies, appealed to the European Court for Human Rights.

After the death of the Mufti of Rodopi in 1985 the Government appointed a new mufti *ad interim* who resigned in 1990. Like Mehmet Emin Aga in Xanthi, Ibrahim _erif was elected by his community as their mufti in Rodopi on 28 December 1990. However, using the recent Law 1920/1991, the state confirmed the appointed *ad interim* mufti as mufti on 4 May 1991. Ibrahim _erif was subsequently charged with "usurping the function of a minister of a "known religion" and of publicly wearing the robes of such a minister without being entitled to do so". His conviction to eight months' imprisonment was upheld by the Court of Appeal and Supreme Court. In 1997 he brought his case to the European Court for Human Rights.

On 14 December 1999 a chamber of the European Court for Human Rights concluded that Greece had violated Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which enshrines the rights to freedom of thought, conscience and religion.⁶

⁶ If not returned to the Grand Chamber of the Court, this judgment will become final on 14 March 2000.

In its unanimous ruling, the chamber of the European Court for Human Rights stated that: *"The domestic courts convicted the applicant because he had issued a message about the religious significance of a feast, delivered a speech at a religious gathering, issued another message on the occasion of a religious holiday and appeared in the clothes of a religious leader. Moreover, it had not been disputed that the applicant had the support of at least a part of the Moslem community in Rodopi".* Therefore, in the Court's view, *"... punishing a person for the mere fact that he acted as the religious leader of a group that willingly followed him could hardly be considered compatible with the demands of religious pluralism in a democratic society. Moreover, the Court did not consider that, in democratic societies, the State needed to take measures to ensure that religious communities remained or were brought under a unified leadership. The Court recognized that it was possible that tension was created in situations where a religious or any other community became divided. However, it considered that this was one of the unavoidable consequences of pluralism. The role of the authorities in such circumstances was not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerated each other".*

The European Court for Human Rights also noted that the Greek Government *"did not make any allusion to disturbances among the Moslems in Rodopi that had actually been or could have been caused by the existence of two religious leaders".* Moreover, as *"nothing was adduced that could warrant qualifying the risk of tension between the Moslems and Christians or between Greece and Turkey as anything more than a very remote possibility",* the

European Court for Human Rights considered that "the applicant's convictions under Articles 175 and 176 of the Criminal Code were [not] justified in the circumstances of the case by a pressing social need" and that it interfered with his right "in community with others and in public to manifest his religion in worship and teaching".

III. International Standards

Amnesty International believes that the convictions against Mehmet Emin Aga violate a number of articles in the Greek Constitution⁷ which guarantee the right to freedom of religion and expression. These rights are also guaranteed by international human rights treaties which Greece has ratified and is therefore bound to observe. These include the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), Article 9 of which states that:

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

⁷ In particular, Article 5 (2) which states that "All persons living within the Greek territory shall enjoy full protection of their life, honor and freedom, irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided by international law"; Article 13 (1) which states that: "Freedom of religious conscience is inviolable. Enjoyment of individual and civil rights does not depend on the individual's religious belief"; and Article 14 (1) which states that: "Every person may express and propagate his thoughts orally, in writing and through the press in compliance with the laws of the State".

and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 10 of the European Convention states that:

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 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, 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. "

Moreover, the International Covenant on Civil and Political Rights (ICCPR) states in its Article 19 that:

"1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;*
- (b) For the protection of national security or of public order (ordre public), or of public health or moral*

Article 27 of the ICCPR, enshrines the cultural, religious and linguistic rights of minorities:

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language".

IV Amnesty International's position and recommendations to the Greek authorities

Amnesty International takes no position on the procedures to be followed for choosing religious leaders and has no view on who is, or who should be, the Mufti of Xanthi. The organization's concern in this case is based solely on its belief that by sending leaflets with religious messages to the Muslim inhabitants of Xanthi, which he signed as the Mufti of Xanthi, Mehmet Emin Aga was exercising his right to freedom of religion and expression.

In sentencing Mehmet Emin Aga to terms of imprisonment solely for the peaceful exercise of his right to freedom of religion, Amnesty International considers that Greece is acting in violation of its obligations under the European Convention and the ICCPR which safeguard the right to freedom of thought, conscience and religion. If he is imprisoned on the basis of these charges, Amnesty International will adopt Mehmet Emin Aga as a prisoner of conscience.

Amnesty International recommends the Greek authorities to

- ☞ take all steps to ensure that Mehmet Emin Aga is not imprisoned solely on account of his peaceful exercise of his right to freedom of religion, thought, conscience and expression;

- ☞ *quash all sentences brought against Mehmet Emin Aga for the peaceful exercise of his right to freedom of religion and expression;*
- ☞ *ensure that any charges which violate his right to freedom of religion and expression are dropped;*
- ☞ *take all steps to ensure that the rights of liberty, freedom of thought, conscience, religion and expression as guaranteed by the European Convention and other international standards are respected,*
- ☞ *ratify without delay the Council of Europe Framework Convention for the Protection of National Minorities, which the government signed in September 1997.*

Background information

The Turkish minority⁸ in Greece:

During the XIXth and early XXth centuries new states emerged in southeastern Europe, breaking from an Ottoman empire in decline. The new division of territories was based on the creation of "ethnic states" which fitted within an international context of an ideal division of countries and territories into "nation-states". This policy resulted in a potential for conflicts which, roughly speaking, has its origins in two main factors: there was not only a strong feeling of irredentism in the newly-formed states, but also internal tensions between the new Orthodox Christian rulers⁹ (that is the majority population) and their Muslim population (the minority group) which they perceive as "remnants" from the Ottoman "occupation"¹⁰.

⁸ Greece officially does not recognize the existence of ethnic minorities. Under its legislation it recognizes only two religious minorities: Muslims and Jews. See "The Legal Status of Minorities in Greece today", Stephanos Stavros, *Journal of Modern Greek Studies*, Volume 13, 1995.

⁹ The Orthodox Christian states which emerged from the fall of the Ottoman Empire are Serbia, Montenegro, Greece and Bulgaria and later Romania.

¹⁰ For details see Hugh Poulton "Minorities in South East Europe: Inclusion and Exclusion", Minority Rights Group International, London, 1998.

After the first World War (1914-1918) various treaties were signed between new states which were created and/or had their borders redrawn in an attempt to follow ethnic lines on the map of southeastern Europe. However, this did not prevent the later recurrence of local conflicts.

The 1920-22 war between Greece and Turkey resulted in the signature of the *Treaty of Lausanne*¹¹ in 1923 a convention which provided for a compulsory exchange of population (except for the Greeks living in Istanbul and the Turks in Western Thrace) between the two countries. About 390,000 Muslims (Turks in their majority) resettled in Turkey while about one million Greeks left Turkey (of which about 540,000 settled in Greek Macedonia)¹². In accordance with the Treaty of Lausanne, Greece formally recognized the existence of a Muslim minority on its territory. However, "Muslim" minority is a broad term which encompasses Turkish, Pomak and Rom ethnic groups. The ethnic Turkish minority is settled mainly around Komotini. According to official figures the Muslim minority is estimated at 98,000 members, of which 50 per cent are Turks, 35 per cent Pomaks and 15 per cent Roma¹³.

APPENDIX

¹¹ See footnote 1.

¹² Figures in "*Minorities in Southeast Europe: inclusion and exclusion*", a report by Minority Rights Group, London 1998.

¹³ Figures from Greek Helsinki Monitor "*Human Rights in Greece, joint concise Annual Report for 1999*", Athens 7/1/2000.

THE TRIALS OF MEHMET EMIN AGA

(List compiled by Greek Helsinki Monitor, 3/12/1999)

CASE 1:

Evidence : Messages released on five different Islamic holidays on January 11, April 19, 1993 and January 3, January 19 and February 10, 1994.

First Instance Court : June 28, 1996; Single-Member Criminal Court of Agrinio.

Outcome: Guilty verdict for two cases combined in one trial. Sentenced to 20 months in prison.

Appeals Court : April 29, 1998; Three-Member Criminal Court of Agrinio.

Outcome: Guilty verdict upheld. Sentence reduced to six months in prison. He bought off the sentence.

Supreme Court : February 19, 1999; Appeal rejected (Decision no:594/1999).

CASE 2:

Evidence : Message released on an Islamic holiday on February 17, 1993.

First Instance Court : April 12, 1994; Three-Member Criminal Court of Xanthi.

Outcome: Guilty verdict. Sentenced to 10 months in prison.

Appeals Court : January 24, 1995; Criminal Court of Larisa.

Outcome: Guilty verdict and sentence upheld. Mehmet Emin Aga spent six months in jail and bought off the remaining four months (he was released due to serious health problems).

Supreme Court : Appeal rejected.

CASE 3:

Evidence : Messages released on eight different Islamic holidays on March 6, April 1, May 15, August 5, August 14, November 22, December 24, 1994 and January 9,

1995.

First Instance Court : May 7, 1996, Single-Member Criminal Court of Salonica.

Outcome : Guilty verdict. Sentenced to 12 months in prison.

Appeals Court : November 5, 1998; Three-Member Criminal Court of Salonica.

Outcome : Guilty verdict upheld. Sentence reduced to eight months. He bought off the sentence.

Supreme Court : May 7, 1999; Appeal rejected (Decision no:1133/1999).

CASE 4:

Evidence : Messages released on six different Islamic holidays on August 8, May 3, November 11, November 13, December 30, 1995, and January 17, 1996.

First Instance Court : April 3, 1997; Single-Member Criminal Court of Lamia.

Outcome : Guilty verdict for two cases combined in one trial. Sentenced to 20 months in prison.

Appeals Court : February 25, 1998; Three-Member Criminal Court of Lamia.

Outcome: Guilty verdict upheld. Sentence reduced to 14 months in prison. He bought off the sentence.

Supreme Court : March 12, 1999; Appeal rejected (Decisions: 592/1999, 593/1999).

CASE 5 :

Evidence : Messages released on four different Islamic holidays on February 11, February 17, April 22 and July 25, 1996

First Instance Court : November 6, 1997; Single-Member Criminal Court of Lamia.

Outcome: Guilty verdict for three cases combined in one trial. Sentenced to 22 months in prison.

Appeals Court : June 24, 1998; Three-Member Criminal Court of Lamia.

Outcome: Guilty verdict upheld. Sentence reduced to 14 months in prison. He bought off the sentence.

Supreme Court : September 21, 1999; quashed the decision of the lower court for purely procedural considerations (Decision numbers: 1416/1999, 1417/1999)

Appeals Court : April 13, 2000 Three-Member Criminal Court of Lamia to rehear the appeal.

CASE 6:

Evidence : Messages released on five different Islamic holidays on June 28, July 25, November 8; December 1, and December 20, 1996.

First Instance Court : December 11, 1997; Single-Member Criminal Court of Lamia.

Outcome: Guilty verdict for two cases combined in one trial. Sentenced to 16 months in prison.

Appeals Court : January 27, 1999; Three-Member Criminal Court of Lamia,

Outcome: Guilty verdict upheld. Sentence reduced to 12 months in prison. He bought off the sentence.

Supreme Court : Case pending.

CASE 7:

Evidence : Messages released on Islamic holidays on January 7, 1997.

First Instance Court : May 28, 1998; Single-Member Criminal Court of Lamia.

Outcome: Guilty verdict. Sentenced to seven months in prison.

Appeals Court : January 27, 1999; Three-Member Criminal Court of Lamia,

Outcome: Guilty verdict upheld. Sentence reduced to five months in prison. He bought off the sentence.

Supreme Court : Case pending.

CASE 8:

Evidence : Messages released on three different Islamic holidays on January 30, November 20 and December 21, 1997.

First Instance Court : March 24, 1999; Single-Member Court of Seres.

Outcome : Guilty verdict. Sentenced to 12 months in prison.

Appeals Court : Case pending.

CASE 9:

Evidence : Messages released on two Islamic holidays on April 11 and July 7, 1997.

First Instance Court : December 14, 1998; Single-Member Criminal Court of Larisa

Outcome : Guilty verdict. Sentenced to seven months in prison.

Appeals Court : Three Member Criminal Court of Larissa, sitting as a court of appeal, adjourned the hearing on 25 October 1999 upon a medical report submitted by Mehmet Emin Aga's lawyer documenting serious health problems of his client.

CASE 10:

Evidence : Messages released on two Islamic holidays on January 19 and January 24, 1998.

First Instance Court : Mehmet Emin Aga has been summoned to appear before the Single-Member Criminal Court of Lamia on December 1, 1999.

Outcome : Guilty verdict. Sentenced to six months in prison.

Appeals Court : Case pending.

CASE 11:

Evidence : Announcement released on March 18, 1998 and message released on March 19, 1998.

First Instance Court : Mehmet Emin Aga has been summoned to appear before the Single-Member Criminal Court of Xanthi on June 30, 2000.

CASE 12:

Evidence : Message released on October 19, 1998.

First Instance Court : Mehmet Emin Aga has been summoned to appear before the Single-Member Criminal Court of Xanthi on June 2, 2000.

CASE 13:

Evidence : Message released on November 25, 1998.

First Instance Court : Mehmet Emin Aga has been summoned to appear before the Single-Member Criminal Court of Xanthi on June 2, 2000.

CASE 14:

Evidence : Message released on December 10, 1998.

First Instance Court : Mehmet Emin Aga has been summoned to appear before the Single-Member Criminal Court of Xanthi on June 2, 2000.