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

CASE OF GRIGORIADES v. GREECE

(121/1996/740/939)

JUDGMENT

STRASBOURG

25 November 1997

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SUMMARY[1]

Judgment delivered by a Grand Chamber

Greece – conviction of an officer of the crime of insult to the army (Article 74 of the Military Criminal Code)

I. ARTICLE 10 OF THE CONVENTION

A. Whether there was an "interference" with the applicant's rights under Article 10

It was not disputed that the applicant's conviction and sentence consituted an "interference" with his right to freedom of expression.

B. Whether the interference was "prescribed by law"

Article 74 of the Military Criminal Code was sufficiently precise – it ought to have been clear to the applicant that he risked incurring a criminal sanction – interference was "prescribed by law".

C. Whether the interference pursued a legitimate aim

An effective military defence requires the maintenance of an appropriate measure of discipline in the armed forces – interference pursued at any rate the legitimate aims of protecting national security and public safety.

D. Whether the interference was "necessary in a democratic society"

Principles emerging from the Court's case-law reiterated.

Article 10 applies to military personnel as to all other persons within the jurisdiction of the Contracting States – nevertheless it must be open to the State to impose restrictions where there is a real threat to military discipline – it is not, however, open to the national authorities to rely on such rules for the purpose of frustrating the expression of opinions, even if these are directed against the army as an institution.

In the present case the applicant had had a letter delivered to his commanding officer which the latter had considered insulting to the armed forces – it is true that the letter contained certain strong and intemperate remarks – however, these remarks were made in the context of a general and lengthy discourse critical of army life and the army as an institution – the letter was not published by the applicant or disseminated to a wider audience – it did not contain any insults directed against either the recipient of the letter or any other person – objective impact on military discipline insignificant – applicant's prosecution and conviction not necessary in a democratic society.

Conclusion: violation (twelve votes to eight).

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

II. ARTICLE 7 OF THE CONVENTION

Applicant's arguments in this respect coincide with those put forward in support of allegation that his conviction and sentence were not "prescribed by law" – Court refers to its contrary finding.

Conclusion: no violation (unanimously).

III. ARTICLE 50 OF THE CONVENTION

Damage: no causal link established between violation of Article 10 found and damage alleged.

Costs and expenses: award made on an equitable basis.

Conclusion: respondent State to pay specified sum to applicant for costs and expenses (seventeen votes to three).

COURT'S CASE-LAW REFERRED TO

6.11.1980, *Sunday Times* v. the United Kingdom; 19.12.1994, Vereinigung demokratischer Soldaten Österreichs and Gubi v. Austria; 26.9.1995, Vogt v. Germany

In the case of Grigoriades v. Greece[1],

The European Court of Human Rights, sitting, in accordance with Rule 51 of Rules of Court A[2], as a Grand Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr R. BERNHARDT,
Mr F. GÖLCÜKLÜ,
Mr L.-E. PETTITI,
Mr B. WALSH,
Mr R. MACDONALD,
Mr C. RUSSO,
Mr A. SPIELMANN,
Mr N. VALTICOS,
Mr I. FOIGHEL,
Mr R. PEKKANEN,
Mr A.N. LOIZOU,
Mr J.M. MORENILLA,
Sir John FREELAND,
Mr L. WILDHABER,
Mr P. JAMBREK,
Mr K. JUNGWIERT,
Mr U. LÕHMUS,
Mr J. CASADEVALL,
Mr V. BUTKEVYCH,

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

Having deliberated in private on 26 June, 29 August and 24 October 1997,

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

Notes by the Registrar

1. The case is numbered 121/1996/740/939. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

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.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 16 September 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 24348/94) against the Hellenic Republic lodged with the Commission under Article 25 by a Greek national, Mr Panayiotis Grigoriades, on 17 March 1994.

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 and 10 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30). The lawyer was given leave by the President to use the Greek language (Rule 27 § 3).

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 17 September 1996, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr L.-E. Pettiti, Mr B. Walsh, Mr R. Pekkanen, Mr A.N. Loizou, Mr L. Wildhaber, Mr K. Jungwiert and Mr J. Casadevall (Article 43 *in fine* of the Convention and Rule 21 § 5).

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 applicant's 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 20 March 1997. No memorial was received from the applicant within the time-limit set by the President of the Chamber. A document setting out the applicant's claims for just satisfaction under Article 50 was received at the registry on 26 May 1997. The Delegate of the Commission did not reply in writing.

5. On 21 March and 2 April 1997 the Commission produced certain documents contained in the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 24 June 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*
Mr P. GEORGAKOPOULOS, Senior Adviser,
Legal Council of State, *Delegate of the Agent*,
Mr V. KYRIAZOPOULOS, Legal Assistant,
Legal Council of State, *Adviser*;

(b) *for the Commission*
Mr L. LOUCAIDES, *Delegate*;

(c) *for the applicant*
Mr IPP. MYLONAS, of the Athens Bar, *Counsel*.

The Court heard addresses by Mr Loucaides, Mr Mylonas, Mr Kyriazopoulos and Mr Georgakopoulos.

7. Following deliberations held on 26 June 1997 the Chamber relinquished jurisdiction in favour of a Grand Chamber (Rule 51).

The Grand Chamber to be constituted included *ex officio* Mr Ryssdal, the President of the Court, and Mr R. Bernhardt, the Vice-President, together with the members and the four substitutes of the original Chamber, the latter being, Mr I. Foighel, Mr R. Macdonald, Mr F. Gölcüklü and Mr A. Spielmann (Rule 51 § 2 (a) and (b)). On 3 July 1997, the President, in the presence of the Registrar, drew by lot the names of the seven additional judges needed to complete the Grand Chamber, namely Mr C. Russo, Mr J.M. Morenilla, Sir John Freeland, Mr P. Jambrek, Mr U. Lõhmus, Mr V. Butkevych and Mr V. Toumanov (Rule 51 § 2 (c)).

Mr Toumanov was prevented from taking part in the consideration of the case.

8. On 3 July 1997 the Government submitted a further document, having been given leave to do so by the President at the hearing.

9. Having taken note of the agreement of the Agent of the Government, the Delegate of the Commission and the applicant, the Court decided on 29 August 1997 that consideration of the case should continue without resumption of the oral proceedings (Rule 26).

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

A. Background to the case

10. The applicant was a conscripted probationary reserve officer holding the rank of second lieutenant.

11. In the course of his military service, the applicant claimed to have discovered a number of abuses committed against conscripts and came into conflict with his superiors as a result. Criminal and disciplinary proceedings were instituted against him. The former ended with his acquittal. However, a disciplinary penalty was imposed on him, as a result of which he had to serve additional time in the army.

12. On 30 April 1989 the applicant was granted twenty-four hours' leave. He failed to return to his unit after its expiry. He was declared a deserter on 6 May 1989 and criminal charges were brought against him.

13. On 10 May 1989 the applicant sent a letter to his unit's commanding officer through a taxi driver.

14. The letter read as follows:

> "PERSONAL STATEMENT
>
> After two whole years of military service as reserve officer cadet, I am obliged to inform you that I object to the prolongation of my military service following a penalty imposed on me for defending soldiers' rights. Judging from my experience to this date, I think that it was imposed as part of a general approach intended to suppress both freedom of personality and the vindication of constitutional rights and personal freedom. Apart from the personal cost, I generally consider that imposing a penalty on young soldiers is inadmissible and unconstitutional, all the more so when such penalty is related to the struggle of young people for respect for the ideological – social human rights of people and [their struggle] to defend their personality against the humiliations of the military apparatus. Having maintained for twenty-four months a fighting stance and a conscious position on that subject, I reserve the right, which is also a duty, to establish social justice and peace, now more than ever and, being fully aware of my actions which are imperatively dictated to me in the interests of society, hereby to DENOUNCE:
>
> That the army is an apparatus opposed to man and society and, by its nature, contrary to peace.

I am now absolutely certain that the process of military service is responsible for crimes and aggressiveness in society since it has created a psychology of violence, overcoming in this manner all moral and psychological resistance to violence. The army remains a criminal and terrorist apparatus which, by creating an atmosphere of intimidation and reducing to tatters the spiritual welfare of the radical youth, clearly aims at transforming people to mere parts of an apparatus of domination which ruins human nature and transforms human relations from relations of friendship and love to relations of dependence, through a hierarchy of fear guided by an illiberal and oppressing set of Standing Orders (No. 20-1), records of political beliefs, etc. The truth is that the living conditions in the army are unacceptable to the point of being destructive and any healthy form of resistance and any effort towards dialogue are persecuted and brought defenceless before the military justice, a dangerous institution that should be abolished. All this happens despite the electoral announcements of the Ministry of National Defence concerning respect for the personality of the soldiers; in reality, the Ministry participates in and encourages such oppressive processes. By this means of protest, I and all young people who feel a deep sense of injustice because their life has been reduced to tatters, FIGHT:

To stop all forms of persecution of those who have participated in processes that promote social justice, peace and the right to have an opinion on issues that concern our lives; for the Ministry to have the political will to control in a meaningful manner the military power and to prosecute those who are really responsible for this authoritarianism, instead of systematically covering for them; for the State to establish once and for all respect for the initiatives and social choices of young people, by eliminating all penalties for the promotion of such ideals. It should not content itself with "socialist vocabulary" and then follow the practice of extermination; to declare that the elimination of these authoritarian institutions is a matter of a multi-faceted and long struggle at a personal, political and social level; to put an end to discrimination, favouritism and dependency, all of these being methods used by corrupt organs.

Thus, having gone through this experience, I have developed a free conscience which prevents me from taking part in and being an accomplice to this criminal process, both in its operation and in its structure, and refuse from now on to wear my uniform in these conditions. If I were to wear it, I feel that I would find myself in a crisis of conscience, contrary to my nature and beliefs as a man brought up with liberal ideas. We, the young generation, will resist any attempt to be burdened with weaknesses and become vehicles of the military establishment. This is why my stance cannot be lawfully considered to be desertion or insubordination, since it stems from fundamental human rights and is in conformity with the provisions of the Greek Constitution. I consider that I remain a citizen and a free man who sought to remain true to his conscience and the free will flowing from it. I also consider that my stance and the voicing of my protest against this humiliation are the most genuine expression of solidarity with and support for conscientious objectors because I firmly believe that this is how the struggle for social liberation and peace is carried on."

15. A fellow reserve officer testified before the Ioannina Permanent Army Tribunal (see paragraph 18 below) that the applicant gave him a copy of the letter on 10 May 1989. It has not been alleged that any further copies were circulated.

B. The criminal proceedings against the applicant

16. Taking the view that the content of the letter constituted an insult to the armed forces, the commanding officer instituted further criminal proceedings against the applicant under Article 74 of the Military Criminal Code (see paragraph 26 below).

17. On 12 May 1989 the applicant appeared before the investigating officer, a member of the army judicial corps, who remanded him in custody on a charge of desertion.

1. Proceedings in the Permanent Army Tribunal

18. The applicant was tried on 27 June 1989 by the Permanent Army Tribunal of Ioannina on charges of desertion and insulting the army.

At the outset of the trial the defence challenged the constitutionality of the second charge on the ground that the relevant criminal provision was not *lex certa* and that the expression of criticism could not amount to an insult. That preliminary objection was dismissed.

19. At the close of the hearing the president of the court formulated a series of questions which the members of the court had to address before deciding on the applicant's guilt. The questions relating to the insult charge were the following:

> "(a) Did the accused commit the offence of insulting the Greek army when**,** on 10 May 1989, while a reserve officer on probation, he sent a two-page typed personal statement to the commanding officer of the X unit, which came to the latter's knowledge on the same day and which contained, *inter alia*, the following expressions contemptuous of, and disparaging, the authority of the army: '... [T]he army is an apparatus opposed to man and society ... [t]he army remains a criminal and terrorist apparatus which, by creating an atmosphere of intimidation and reducing to tatters the spiritual welfare of the radical youth, clearly aims at transforming people to mere parts of an apparatus of domination which ruins human nature and transforms human relations from relations of friendship and love to relations of dependence, through a hierarchy of fear guided by an illiberal and oppressive set of Standing Orders (No. 20-1), records of political beliefs, etc. ...'. In so doing, did he wilfully insult the Greek army as a constitutionally entrenched institution of the Nation?
>
> (b) ... [did the applicant act] in the mistaken but bona fide belief that he was engaging in permissible criticism, in accordance with Article 14 of the Constitution currently in force?"

20. In a judgment delivered the same day the court, by a unanimous vote, answered the first question in the affirmative and the second in the negative. The applicant was found guilty of desertion and insulting the army. Taking into account the fact that the applicant was a first-offender, the court sentenced him to imprisonment for one year and eight months for the first offence and three months for the second offence, and ordered him to serve a global sentence of one year and ten months.

2. Proceedings in the Military Appeal Court

21. The applicant lodged an appeal with the Military Appeal Court which was heard on 5 September 1989. In a judgment delivered the same day the court quashed the applicant's conviction for desertion. However, it upheld, by three votes to two, his conviction for insulting the army after dismissing his objection that the relevant provision was contrary to the Constitution and, taking into account that the applicant had no previous convictions, sentenced him to three months' imprisonment. The applicant was immediately released, the time he had spent in detention on remand being credited against his sentence.

3. Proceedings in the Court of Cassation

22. On 20 September 1989 the applicant lodged an appeal on points of law to the Court of Cassation (*Arios Pagos*), on the ground that Article 74 of the Military Criminal Code had not been correctly construed and applied. He argued, *inter alia*, that general criticism of the armed forces could not be considered an insult. He claimed in addition that the provision in question violated the Constitution because of its vagueness and could not be considered *lex certa*, and also that it imposed unwarranted limitations on the right to freedom of expression.

23. The applicant's appeal on points of law was heard by a Chamber of the Court of Cassation on 12 March 1991. On 26 June 1991 the Chamber of the Court of Cassation decided to submit the case to the plenary court, having considered, by three votes to two, that Article 74 of the Military Criminal Code did not violate the Constitution and that it had been correctly applied in the applicant's case.

24. In a judgment delivered on 22 September 1993 the plenary Court of Cassation considered that Article 74 of the Code sufficiently circumscribed the elements of the offence, namely the insult and the intention of the culprit. Elaborating on this point, the court held that

> "[t]he concept of 'insult' includes every show of contempt damaging the esteem, and respect for, and the reputation of, the protected value. To qualify as an insult, such expression must convey contempt, taunt and denigration; it is not sufficient merely to call into question the protected value. This value is the armed forces and, more particularly, not the army or air force and the navy individually, but the armed forces in their entirety as an idea and an institution entrusted with defending the freedom and

independence of the country and the necessary training of Greeks who are able to bear arms. Article 74 of the Military Criminal Code does not specify the nature of the insult nor the manner and means by which the insult is made, as it was not the intention of the legislature to make insulting behaviour of a particular kind, or committed in a particular manner, or by a particular means, a criminal offence. Any insult of the army by a member of the armed forces constitutes a criminal offence. This does not create any uncertainty as to the elements of the offence. Any further specification would have limited the scope of the criminal prohibition, which the legislature did not intend. Article 14 of the Constitution, which protects freedom of opinion, does not in any way preclude the legislature from making every instance of insulting the army by a member of the armed forces a criminal offence. The protection of Article 14 is subject to limitations provided for by law ..."

For these reasons, the plenary Court of Cassation upheld the applicant's conviction.

II. RELEVANT DOMESTIC LAW

25. Article 14 § 1 of the Greek Constitution provides:

"Every person may express and propagate his thoughts orally, in writing and through the press in compliance with the laws of the State."

26. Article 74 of the Military Criminal Code provides:

"*Insults to the flag or the armed forces*

A member of the armed forces who insults the flag, the armed forces or an emblem of their command shall be punished by a term of imprisonment of at least six months. If he is an officer, he shall also be stripped of his rank."

27. A corresponding civilian offence is defined by Article 181 of the Criminal Code, which provides as follows:

"*Insults to authorities and to symbols*

1. Any person shall be punished with imprisonment for up to two years who:

a) publicly insults the Prime Minister of the country, the Government, Parliament, the Speaker of Parliament, the leaders of the political parties recognised by the Rules of Parliament and the judicial authorities;

b) insults or, as a display of hatred or contempt, damages or disfigures an emblem or symbol of State sovereignty or the President of the Republic.

2. Criticism in itself shall not constitute an insult of an authority."

28. A new Military Criminal Code entered into force in 1995. Article 58 of that Code provides:

"A member of the armed forces who, by speech, actions or any other means whatsoever, publicly expresses contempt for the flag, the armed forces or a symbol of their authority, shall be punished by a term of imprisonment of at least three months."

PROCEEDINGS BEFORE THE COMMISSION

29. Mr Grigoriades applied to the Commission on 17 March 1994. He alleged a violation of the right to freedom of expression guaranteed by Article 10 of the Convention. He also claimed to have been convicted under an imprecise provision of criminal law, contrary to Article 7 of the Convention.

30. The Commission declared the application (no. 24348/94) admissible on 4 September 1995. In its report of 25 June 1996 (Article 31), it expressed the opinion that there had been a violation of Article 10 of the Convention (twenty-eight votes to one) but not of Article 7 (unanimously). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

31. The Government concluded their memorial by expressing the opinion that the applicant's allegations that Articles 7 and 10 of the Convention had been violated were unfounded.

1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1997), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

32. The applicant alleged that his conviction for insulting the army constituted a violation of Article 10 of the Convention, which provides 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 authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 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."

The Commission agreed with the applicant that there had been a violation of that provision. The Government disputed this.

A. Whether there has been an "interference" with the applicant's rights under Article 10

33. It was common ground that the applicant's conviction of insulting the army, and the sentence of three months imposed on him, constituted an interference with his freedom of expression, guaranteed by paragraph 1 of Article 10.

The Court sees no reason to hold otherwise.

B. Whether the interference was "prescribed by law"

34. It was not disputed by the applicant that his conviction had a basis in national law, namely Article 74 of the Military Criminal Code as in force at the time. On the other hand, the applicant maintained that that provision had not been precise enough to satisfy the foreseeability requirement that flows from the expression "prescribed by law".

The wording of the provision was, in his contention, over-broad. As had been recognised by the Greek Court of Cassation itself in its judgment concerning the present case, Article 74 did not define the concept of "insult" or specify acts considered to be insulting. Nor was there any case-law under that provision which might offer guidance.

The case-law cited by the Government concerning Article 181 of the Criminal Code, which defined the corresponding civilian offence of insulting authorities and symbols of authority, was irrelevant. Firstly, Article 181 of the Criminal Code was a different and unrelated provision in any case, and secondly, the expression used in that provision and accordingly construed by the case-law was based on a verb meaning "to insult", unlike Article 74 of the Military Criminal Code, which used another verb which could be more accurately translated as "to offend".

35. The Government argued that the offence of insulting the army under Article 74 of the Military Criminal Code was a specific instance of insulting authority as defined by Article 181 of the Criminal Code, so that the construction placed on the latter provision could serve to clarify the former as well.

36. The Commission considered that Article 74 of the Military Criminal Code did not differ in any way from other statutory provisions which made "insult" a criminal offence.

37. The Court reiterates that, according to its case-law, the relevant national law must be formulated with sufficient precision to enable the persons concerned – if need be with appropriate legal advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.

38. It is true that Article 74 of the Greek Military Criminal Code was couched in very broad terms. Nonetheless, in the Court's view, it met the above standard. On the ordinary meaning of the word "insult" – which is akin to the expression "offend" – it ought to have been clear to the applicant that he risked incurring a criminal sanction. It follows that the interference complained of was "prescribed by law".

C. Whether the interference pursued a legitimate aim

39. The Government contended that the measures taken against the applicant under Article 74 of the Military Criminal Code had been intended to safeguard the effectiveness of the army in fulfilling its purpose, which

was to protect Greek society against external or internal threats. They had therefore pursued the aims of protecting national security, territorial integrity and public safety, which were legitimate under Article 10 § 2.

40. The applicant offered no argument to the contrary. The Commission considered that the applicant's conviction pursued a legitimate aim "to the extent that it [had been] imposed to maintain discipline in the army".

41. The Court has no doubt that an effective military defence requires the maintenance of an appropriate measure of discipline in the armed forces and accordingly finds that the interference complained of pursued at any rate the legitimate aims of protecting national security and public safety invoked by the Government.

D. Whether the interference was "necessary in a democratic society"

1. Arguments before the Court

42. The applicant, with whom the Commission concurred in substance, argued that his conviction for insulting the army had not been necessary.

He pointed, first of all, to the factual context in which he had written the letter in question to his commanding officer. Throughout the two years of his military service, he had striven to improve the lot of conscripted soldiers. He alleged that it was as a result of this activity that a disciplinary penalty had been imposed on him in the form of an additional period of military service. When he had refused to serve for this additional period, he had been charged with desertion; it was at that point that, indignant at what he perceived as an injustice, he had written the letter. Ultimately, the trial courts had acquitted him of desertion and thus shown his indignation to have been justified.

Admittedly, the letter had contained strong views but they had to be seen as permissible criticism, the limits of which were wider with regard to the various arms of the executive than in relation to a private citizen. The letter did not contain any insults directed at any individual. More importantly, the letter was not a public document, having been sent only to the applicant's commanding officer; to the extent that it had later become public, that had been due solely to the latter's actions in bringing about the applicant's prosecution. In those circumstances, and despite the fact that the letter had been seen by one other conscript, its potential for undermining military discipline had been insignificant.

Finally, the applicant expressed the opinion that the penal sanction imposed, namely a term of imprisonment of three months, had been disproportionate. His commanding officer had had the option of imposing a disciplinary penalty instead of resorting to full-blown criminal proceedings, or a lesser sentence could have been imposed.

43. The Government did not agree that the sanction imposed on the applicant had gone beyond what could be considered "necessary in a democratic society".

Making it an offence to insult the army did not, in their view, affect the essence of the freedom of expression. It merely met the need to counter excessive use of that freedom, namely, by a member of the armed forces and against the army. In particular, given the special exigencies of military life, it was necessary to resort to the criminal law to maintain military discipline and thus the effectiveness and prestige of the armed forces.

The letter itself had been phrased in insulting terms, calling the Greek army a "criminal and terrorist apparatus". It had not contained any specific criticism or allegations of actual violations of the rights of conscripts.

The nature of the letter as a threat to discipline was also apparent from the fact that it had been addressed to a superior officer. The applicant's remarks had not been made in the more innocuous context of, for instance, an informal discussion between officers of the same rank.

Moreover, the applicant had had the letter delivered to his commanding officer by a taxi driver. That method of delivery did not offer the guarantees of privacy offered by the Greek postal service. In addition, the applicant had given a copy of the letter to a fellow conscript officer. In the circumstances, it was incorrect to consider the letter a mere private expression of opinions.

Finally, since the time the applicant had spent in prison was set off against the time spent in detention on remand and he had not sought a suspended sentence, as he might have done, the sanction imposed had not in itself been disproportionate.

2. The Court's assessment

44. The Court has stated the applicable principles as follows in its judgment in the case of Vogt v. Germany (judgment of 26 September 1995, Series A no. 323, pp. 25–26, § 52):

> "(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfilment. 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 offend, shock or

disturb; such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'. Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established (see the following judgments: Handyside v. the United Kingdom, 7 December 1976, Series A no. 24, p. 23, § 49; Lingens v. Austria, 8 July 1986, Series A no. 103, p. 26, § 41; and Jersild v. Denmark, 23 September 1994, Series A no. 298, p. 26, § 37).

(ii) The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the law and the decisions applying it, even those given by independent courts. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10.

(iii) The Court's task, in exercising its supervisory jurisdiction, 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 Court has 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 are 'relevant and sufficient' (see the *Sunday Times* v. the United Kingdom (no. 2) judgment of 26 November 1991, Series A no. 217, p. 29, § 50). In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see the above-mentioned Jersild judgment, p. 26, § 31)."

45. Article 10 does not stop at the gates of army barracks. It applies to military personnel as to all other persons within the jurisdiction of the Contracting States. Nevertheless, as the Court has previously indicated, it must be open to the State to impose restrictions on freedom of expression where there is a real threat to military discipline, as the proper functioning of an army is hardly imaginable without legal rules designed to prevent servicemen from undermining it (see the Vereinigung demokratischer Soldaten Österreichs and Gubi v Austria judgment of 19 December 1994, Series A no. 302, p. 17, § 36). It is not, however, open to the national authorities to rely on such rules for the purpose of frustrating the expression of opinions, even if these are directed against the army as an institution.

46. In the present case the applicant had a letter delivered to his commanding officer which the latter considered insulting to the armed forces (see paragraph 14 above). The commanding officer decided for that reason to take the matter further and to institute proceedings against the applicant under Article 74 of the Military Criminal Code (see paragraph 16 above).

47. It is true that the contents of the letter included certain strong and intemperate remarks concerning the armed forces in Greece. However, the Court notes that those remarks were made in the context of a general and lengthy discourse critical of army life and the army as an institution. The letter was not published by the applicant or disseminated by him to a wider audience – apart from one other officer who apparently had been given a copy of it – and it has not been alleged that any other person had knowledge of it. Nor did it contain any insults directed against either the recipient of the letter or any other person. Against such a background the Court considers the objective impact on military discipline to have been insignificant.

48. The Court accordingly considers that the prosecution and conviction of the applicant cannot be justified as "necessary in a democratic society" within the meaning of paragraph 2 of Article 10 (see paragraph 44 above). There has thus been a violation of that Article.

II. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

49. The applicant also claimed that Article 74 of the Military Criminal Code was not sufficiently precise to satisfy the requirement of foreseeability. He alleged a violation of 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."

50. This complaint coincides with the applicant's allegation that his conviction and sentence were not "prescribed by law". The Court refers to paragraph 38 above and finds, on the grounds there stated, that there has been no violation of Article 7.

III. APPLICATION OF ARTICLE 50 OF THE CONVENTION

51. Article 50 of the Convention provides as follows:

> "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."

The applicant sought damages as well as reimbursement of his costs and expenses.

A. Damage

52. The applicant claimed 5,000,000 drachmas (GRD) for non-pecuniary damage caused by his imprisonment and by the difficulties which, owing to his conviction, he had had in finding a job as a journalist.

53. The Government noted that the applicant had not had to spend a single day in prison following his conviction. The sentence had been set off against the time which he had spent in detention on remand on the charge of desertion. It had never been suggested that his detention as such had been in violation of the Convention.

54. The Delegate of the Commission did not comment.

55. The Court agrees with the Government. Given that the actual reason for the applicant's detention, the desertion charge, was not before the Court, no award related to the applicant's prison sentence can be made.

Nor can it be accepted without corroboration that the applicant would have found employment any sooner had he not been convicted.

It follows that no causal link has been established between the violation of Article 10 found and the damage alleged. That being so the Court holds that the finding of a violation provides sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered.

B. Costs and expenses

56. The applicant claimed GRD 1,000,000 in respect of costs and expenses incurred in the proceedings before the domestic courts.

His costs and expenses before the Convention institutions were itemised as follows:

(a) GRD 1,000,000 for the proceedings before the Commission;

(b) GRD 800,000 for the proceedings before the Court;

(c) GRD 500,000 for travel and subsistence expenses incurred in connection with his appearance and that of his representative before the Court.

His claims in respect of costs and expenses thus totalled GRD 3,300,000.

57. As regards the domestic proceedings, the Government noted that the applicant had been tried on two charges, on one of which (the desertion charge) he had been acquitted. Only the costs referable to the charge of insult of the army fell to be considered by the Court. They considered GRD 400,000 to be a reasonable sum.

58. As regards the Strasbourg proceedings, the Government did not contest the sum claimed in respect of the proceedings before the Commission. However, they pointed out that the applicant had not submitted a memorial to the Court and contended that the Court should award no more than GRD 250,000 for the proceedings before it. They further stated that the applicant's presence in person at the Court's hearing had served no useful purpose and therefore asked the Court to award only half the sum claimed in respect of travel and subsistence expenses, to cover only the costs incurred by his lawyer.

59. As regards the costs and expenses incurred in attending the hearing, the Court cannot agree with the Government that the applicant's presence served no useful purpose (see, *inter alia*, the *Sunday Times* v. the United Kingdom judgment of 6 November 1980, Series A no. 38, p. 16, § 33).

Deciding on an equitable basis, the Court awards the applicant a global sum of GRD 2,000,000, plus any value-added tax that may be payable, in respect of costs and expenses.

C. Default interest

60. According to the information available to the Court, the statutory rate of interest applicable in Greece at the date of adoption of the present judgment is 6% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* by twelve votes to eight that there has been a violation of Article 10 of the Convention;
2. *Holds* unanimously that there has been no violation of Article 7 of the Convention;
3. *Holds* by seventeen votes to three
   (a) that the finding of a violation of Article 10 of the Convention constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage which the applicant may have sustained;

(b) that the respondent State is to pay the applicant, within three months, 2,000,000 (two million) drachmas, plus any value-added tax that may be payable, in respect of costs and expenses;

(c) that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;

4. *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 25 November 1997.

For the President
Signed: Rudolf BERNHARDT
Vice-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 Bernhardt and Mr Wildhaber;

(b) concurring opinion of Mr Jambrek;

(c) dissenting opinion of Sir John Freeland joined by Mr Russo, Mr Valticos, Mr Loizou and Mr Morenilla;

(d) joint dissenting opinion of Mr Gölcüklü and Mr Pettiti;

(e) dissenting opinion of Mr Casadevall.

Initialled: R. B.
Initialled: H. P.

CONCURRING OPINION OF JUDGES BERNHARDT AND WILDHABER

In paragraph 37 of its judgment, the Court reiterates that the relevant law must be formulated with sufficient precision. Earlier cases have repeatedly stated that, where a law confers a discretion, the scope of the discretion and the manner of its exercise must be indicated with sufficient clarity[1]. In the instant case, the issue is not so much the scope of the discretion but rather the alleged vagueness of the law. What the Court has said with respect to discretion could usefully be expanded so as to include also the problem of vagueness of the instant case. After the Grigoriades case therefore, the rule could be formulated as follows:

> "A law that uses general terms or confers a discretion is not in itself inconsistent with the requirement of sufficient precision and foreseeability, provided that the terms used are not too vague and the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim in question, to give the individual adequate protection against interference."

1. See the following judgments: Goodwin v. the United Kingdom, 27 March 1996, *Reports of Judgments and Decisions* 1996-II, p. 497, § 31; Tolstoy Miloslavsky v. the United Kingdom, 13 July 1995, Series A no. 316-B, p. 71, § 37; Margareta and Roger Andersson v. Sweden, 25 February 1992, Series A no. 226-A, p. 25, § 75; Kruslin v. France, 24 April 1990, Series A no. 176-A, p. 23, § 30; Huvig v. France, 24 April 1990, Series A no. 176-B, p. 55, § 29; Silver and Others v. the United Kingdom, 25 March 1983, Series A no. 61, p. 33, § 88.

CONCURRING OPINION OF JUDGE JAMBREK

1. The key reasons for the finding of a violation in the present case are to be found in paragraph 47 of the judgment. There, the point was made that critical remarks were made "in the context" of a general and lengthy discourse critical of army life and the army as an institution, that they were not published or disseminated to a wider audience, that they were not directed against the recipient or any other person, and that therefore their impact on military discipline was insignificant. It is the aim of this opinion to amend and elaborate on these reasons in some respects.

2. A number of remarks made by the applicant and described in the judgment as "strong", "intemperate" or "insulting" may be characterised as "opinions", i.e., subjective attitudes whereby facts and ideas are assessed, in contrast to factual claims. The protection of "opinions" by Article 10 of the Convention relates both to their substance and to their form; the fact that their wording is offensive, shocking, disturbing or polemical does not take them outside the scope of protection.

3. In the proceedings in the Greek courts the impugned remarks were characterised as "insults". The Court notes that they were not directed against the recipient commanding officer, and that he himself considered them "insulting to the armed forces". The legal concept of an "insult" protects mainly personal honour. State institutions, and the army in particular, do not possess "personal honour" to be protected as a personality right. In this sense, the legitimate aim of the interference with the applicant's freedom of expression could hardly be the "protection of the rights and freedoms of others".

4. The remarks made by the applicant come close to the concept of a "collective insult" which is not directed at any individual. In the present case the critical and even derogatory remarks were directed at the army as a national institution, respect for which is protected by Greek law. According to the Court of Cassation judgment of 22 September 1993, the protected value is not only the army as an organisation, but also the army as an idea, thus symbolically related to "the defence of the freedom and independence of the country".

5. Defamation of the military may of course have an objective impact on military discipline. For that reason the army should also be protected against "insults" which aim at degrading its public acceptance and may thereby undermine fulfilment of its functions. On the other hand, the army, like other State institutions, should not be shielded from criticism. Nor may permissible criticism on relevant issues be prevented by fear of punishment (compare the judgment of the German Constitutional Court, BVerfGE 93, 266, "Soldiers are murderers").

6. I also agree, in general terms, with the logic of the American "flag burning" cases where, *inter alia*, the public interest to show proper respect for the national emblem could not justify government interference with the symbolic act of casting contempt upon the American flag. This act may be considered analogous to a "collective insult", directed at highly respected national values (see the following judgments of the United States Supreme Court: *Street v. New York*, 394 U.S. 576 (1969) ; *Texas v. Johnson*, 491 U.S. 397 (1989) ; *United States v. Eichman*, 496 U.S. 310 (1990)). "Symbolic speech", offensive even to the supreme national values, in my view deserves, *mutatis mutandis,* protection under Article 10 of the Convention whenever an interference is not proportional and necessary in a democratic society.

7. I would also suggest, as an *obiter dictum*, that limitations of the Convention, restricting the exercise of the right to freedom of expression, should be applied – and here I quote from the opinion of Mr Justice Jackson in *Board of Education v. Barnette*, 319 U.S. 624 (1943) – "with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organisation ... Freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order" (quoted in *Street v. New York*, 394 U.S. 576 (1969).

DISSENTING OPINION OF JUDGE Sir John FREELAND, JOINED BY JUDGES RUSSO, VALTICOS, LOIZOU AND MORENILLA

1. We are unable to agree that there has been a violation of Article 10 of the Convention in this case.

2. Our disagreement centres on the question whether the interference with the applicant's right to freedom of expression represented by his conviction under Article 74 of the Military Criminal Code should be regarded, in the circumstances of this case, as "necessary in a democratic society" within the meaning of Article 10 § 2. Like the majority of the Court, we accept that that interference was "prescribed by law" and that it pursued a legitimate aim, in so far as it was intended to maintain order and discipline in the armed forces.

3. As the Court pointed out in its Vereinigung demokratischer Soldaten Österreichs and Gubi v. Austria judgment of 19 December 1994 (Series A no. 302, p. 17, § 36), Article 10 applies to servicemen just as it does to other persons within the jurisdiction of the Contracting States, but " … the proper functioning of an army is hardly imaginable without legal rules designed to prevent servicemen from undermining military discipline …".

4. The primary purpose of military discipline is to ensure that in all circumstances, including situations of extreme stress, lawful orders from a superior in rank are unquestioningly and immediately carried out by the serviceman to whom they are addressed. The rigidity with which military discipline is enforced, and the nature of the legal rules adopted to ensure that it is not undermined, differ from time to time and from State to State. They are no doubt conditioned by a variety of factors, including national characteristics and military traditions as well as the extent of military readiness considered necessary at the relevant time by the State concerned.

5. At the time of the events which gave rise to the applicant's conviction, the Greek armed forces were apparently in a state of mobilisation as a consequence of circumstances existing in the area. The applicant was a reserve officer on probation holding the rank of second lieutenant. He had performed two years of military service, in the course of which he would undoubtedly have been trained in the requirements of military discipline. He claimed to have discovered abuse against conscripts in the course of his service, as a result of which he came into conflict with his superiors and, after disciplinary proceedings against him, was required to serve additional time in the army. On 10 May 1989, after having overstayed a period of leave and having been declared a deserter he sent to his commanding officer, not through the post but by the hand of a taxi driver, a letter in the terms set out in paragraph 14 of the judgment. On the same day he gave a copy of the letter to a fellow reserve officer.

6. The letter included references to the army as being "… an apparatus opposed to man and society …" and " … a criminal and terrorist apparatus which, by creating an atmosphere of intimidation and reducing to tatters the spiritual welfare of the radical youth, clearly aims at transforming people to mere parts of an apparatus of domination which ruins human nature and transforms human relations from relations of friendship and love to relations of dependence, through a hierarchy of fear guided by an illiberal and oppressing set of Standing Orders …". The applicant could not have assumed that this letter would remain a private matter as between himself and his commanding officer: quite apart from his disclosure of a copy to the fellow officer, he must have realised that it would be the duty of the commanding officer to make the contents of the letter known within the military hierarchy.

7. Whether or not the aim of the applicant throughout his letter was, as he claimed, that of "improving the living conditions of soldiers and creating the prerequisites for a more humane army", there can surely be no doubt that some of the language which he used (see above) could reasonably be regarded by the military authorities as calling into question the legitimacy of the army as an institution and hence the extent of his willingness to obey orders emanating within it – in short, as being the language of insubordination rather than that of permissible criticism. More than that, it could reasonably be regarded as being, if left unpunished, a possible encouragement to other soldiers to waver in their duty of obedience – a consideration which gained in importance because of the disclosure of a copy of the letter to a fellow officer and the risk that knowledge of its contents would go further.

8. In the circumstances, and having regard to the margin of appreciation left to the national authorities, we consider that there was sufficient justification for treating the actions of the applicant as having a significant potential for undermining military discipline and the maintenance of order in the army. As regards the proportionality of the measures taken against him, it is to be noted that he was immediately released in the wake of his conviction and subsequent unsuccessful appeals, the time spent in detention on remand having counted against his sentence of three months' imprisonment.

9. In the light of the above, we conclude that the interference with the applicant's freedom of expression is indeed properly to be treated as "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention and gave rise to no violation. It is no part of the Court's function to express a view on whether the means chosen by the national authorities to deal with the applicant's situation were or were not the most suitable, and we, accordingly, refrain from doing so.

JOINT DISSENTING OPINION OF JUDGES GÖLCÜKLÜ AND PETTITI

(*Translation*)

We voted with the minority against finding a violation because we consider that the Grand Chamber's decision departs from the European Court's case-law.

It has always been accepted that, when applying Article 10, the Court must take both paragraphs of that Article into account.

Interference by a State may be justified on public-order grounds.

It has always been accepted that military and prison discipline come within the sphere of public order and require rules that differ from those normally applying.

Every civilised State with an army has a military code on its statute book. Such codes have never been outlawed by any international instrument. They are based on the discipline to which soldiers and particularly officers in active service or in reserve are subject for so long as they have service obligations.

In all States it is an offence to insult the army. In every European State, the State, the army and patriotic public opinion demand that respect be shown for the nation's army, at least by its officers.

The case-law of the institutions of the European Convention on Human Rights on conscientious objectors is consistent with that approach (*idem* with regard to military courts; see the De Jong, Baljet and Van den Brink v. the Netherlands judgment of 22 May 1984, Series A no. 77). The Engel and Others v. the Netherlands judgment of 8 June 1976, Series A no. 22, p. 41, § 100 is instructive as to the Court's position:

> "Of course, the freedom of expression guaranteed by Article 10 applies to servicemen just as it does to other persons within the jurisdiction of the Contracting States. However, the proper functioning of an army is hardly imaginable without legal rules designed to prevent servicemen from undermining military discipline, for example by writings …"

It is not, therefore, possible to compare the freedom of expression of a citizen who is no longer in the army with the more limited freedom of expression of a soldier required to respect rank while doing national service. On the other hand, historians are totally free to criticise the army.

Military justice is not prohibited by the European Convention on Human Rights. Military discipline is by its nature necessary in a democratic society, otherwise anarchy or anti-democratic subversion ensues, contrary to the aims of the Convention.

All the member States of the Council of Europe have disciplinary and sanction systems comparable to Greece's, which are acceptable even on the proportionality principle. To hold otherwise would be to change the very basis of the European Convention on Human Rights and to construe "public order" wrongly, both under domestic law and when concerned with the concept of European public order.

There is a risk that the Court's judgment will be misunderstood by the member States. Permitting a soldier or officer who still has military service obligations to publish material presenting military service as a criminal institution, without any risk of the soldier or officer responsible being prosecuted by the military or judicial authorities under the Military Code, seems unwise. The Court has relied too heavily on the sole criterion of the nature of the letter.

In our opinion, the Grand Chamber has distorted the meaning of the letter and in so doing has not followed the Court's case-law precluding any reopening of a national court's finding of fact where such finding is not contrary to the Convention. The domestic courts, after analysis of the letter, found that it was intended for the applicant's superiors. In our view the Court misconstrued the letter in holding that it was personal, private and not addressed to the military authorities.

As the letter contained a refusal to perform the additional period of service, it was official. As a result the applicant had to be discharged, which required that administrative steps be taken. Save on pain of prosecution for abuse of office, the officer could not withhold it and keep it quiet. He had a duty to bring it to the attention of his superiors. The fact that Mr Grigoriades did not publicise the letter and that it contained no insulting remarks about its addressee is wholly irrelevant to the application of Article 10 (paragraph 45 contradicts paragraph 44).

The letter necessarily came within the scope of acts covered by military disciplinary regulations. The whole of paragraph 45 results in an erroneous justification of Mr Grigoriades' conduct and a condemnation of the Greek State that fails to take into account paragraph 2 of Article 10.

Yet it is accepted in Europe that discipline is essential to maintain the authority of the army and that the army is essential to ensure that democracy is protected from subversion, in accordance with one of the major objectives of the European Convention on Human Rights. The positive results obtained by the international forces in Bosnia emphasise the need to ensure respect for their professional code of ethics, especially as they have for a number of years agreed to incorporate teaching on human rights.

DISSENTING OPINION OF JUDGE CASADEVALL

(*Translation*)

1. I voted in favour of finding that there has been no violation because I consider, in the light of the facts disclosed and in particular the letter sent by the applicant to his superior, that the Greek State has not infringed its obligations under Article 10 of the Convention.

2. It is true that freedom of expression constitutes one of the fundamental pillars of any democratic society and for that reason the States' margin of appreciation must be delimited as strictly as possible. However, paragraph 2 of Article 10 provides that the exercise of freedom of expression, which also carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary for the protection of certain legal interests.

3. Freedom of expression must include freedom to criticise, provided that the criticism is couched in terms that are not excessive and strike a fair balance with regard to the rights of others, order and morals. Certain remarks in the applicant's letter to his superior, such as "…The army remains a criminal and terrorist apparatus ..." to quote but one example, clearly constitute an insult, and even an outrage, to a State institution.

4. Since the case concerned the Greek army, in which the applicant was a probationary reserve officer with the rank of second lieutenant, there could be no difficulty in justifying the applicant's conviction by one of the legitimate aims set out in the second paragraph of Article 10 such as "the prevention of disorder" – because it was an offence which discredited a State institution ("prevention of disorder" in the wider sense given to it by the Court in the Engel and Others v. the Netherlands judgment of 8 June 1976, Series A no. 22, p. 41, § 98) – and "... the functioning of an army is hardly imaginable without legal rules designed to prevent servicemen from undermining military discipline, for example by writings" (ibid., pp. 41–42, § 100).

5. Over and above the fact that the applicant was a member of the armed forces, insulting or offending State institutions (the army, judiciary, Parliament or even emblems) constitutes a punishable offence under the ordinary law in most member States of the Council of Europe and the criminal-law provisions concerned are, in my opinion, compatible with the Convention and in particular freedom of expression.

6. The interference in this case was prescribed by domestic law, pursued a legitimate aim and was necessary in a democratic society under paragraph 2 of Article 10.