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

FIRST SECTION

CASE OF OURANIO TOXO AND OTHERS v. GREECE

(Application no. 74989/01)

JUDGMENT
[Extracts]

STRASBOURG

20 October 2005

FINAL

20/01/2006

In the case of Ouranio Toxo and Others v. Greece,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr L. LOUCAIDES, *President,*
Mr C.L. ROZAKIS,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges,*
and Mr S. NIELSEN, *Section Registrar,*

Having deliberated in private on 29 September 2005,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 74989/01) against the Hellenic Republic lodged with the Court on 11 March 2001, under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), by a political party, Ouranio Toxo, and by two Greek nationals, Mr Pavlos Voskopoulos and Mr Petros Vassiliadis ("the applicants"), who were born in 1964 and 1960 respectively.

2. The applicants were represented by Mrs I. Kourtovik, a lawyer practising in Athens. The Greek Government ("the Government") were represented by their Agent's delegates, Mr M. Apessos, Senior Adviser at the State Legal Council, Mr V. Kyriazopoulos, Adviser at the State Legal Council, and Mrs S. Trekli, Legal Assistant at the State Legal Council.

3. The applicants complained, in particular, of a violation of Article 6 § 1 of the Convention, on account of the length of criminal proceedings, and of a violation of their right to freedom of association under Article 11.

4. The application was allocated to the Court's First Section (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 5 December 2002 the Court declared the application partly inadmissible and decided to give notice to the Government of the complaints under Article 6 § 1 and Articles 8, 10, 11 and 14 of the Convention.

6. By a decision of 27 May 2004, the Court declared the application admissible in respect of the complaints under Article 6 § 1 and Article 11 of the Convention.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

8. The applicants and the Government both submitted written observations on the merits of the case (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The political party Ouranio Toxo (Rainbow), founded in 1994, has regularly taken part in elections since that date. Its declared aims include the defence of the Macedonian minority living in Greece. The other two applicants are members of the party's political secretariat.

10. In September 1995 the party established its headquarters in the town of Florina. The second and third applicants affixed to the balcony of the premises a sign indicating the party's name in the two languages spoken in the region: Greek and Macedonian.

11. According to the applicants, the opening of the headquarters and the affixing of the sign triggered a wave of violent protests by the town's inhabitants, but the police failed to take the appropriate measures to protect them against the various attacks to which they were subjected.

12. In particular, the offices were opened in early September 1995 and on 12 September 1995 priests from the church in Florina published a statement describing the applicants as "friends of Skopje", driven by "anti-Hellenic and treacherous sentiments". The statement continued as follows: "we call upon the people to join a demonstration to protest against the enemies of Greece who arbitrarily display signs with anti-Hellenic slogans, and we will demand their deportation."

13. On 13 September 1995 the Florina town council held an informal meeting and, by a resolution published in the local press, decided to organise protests against the applicants.

14. On the same day the public prosecutor at the Florina Criminal Court ordered the removal of the sign on the ground that the inclusion of the party's name in Macedonian was liable to sow discord (Article 192 of the Criminal Code – see paragraph 23 below) among the local population. Police officers removed the party's sign without giving any explanation to the applicants, who then put up a new sign. That evening, according to the

applicants, while they were inside the party headquarters a crowd of people, among whom they apparently recognised the mayor, the deputy mayor and certain town councillors, gathered in front of the building to shout threats and insults at them, such as "traitors", "dogs", "death to the dogs of Skopje", "you're going to die", and "we'll burn everything". The crowd also allegedly demanded that the applicants hand over the sign.

15. On 14 September 1995 at about 1.30 a.m. a number of people allegedly attacked the party headquarters, and, after breaking down the door, assaulted those inside and demanded that they hand over the sign, which the applicants did. Another group entered the premises at approximately 4 a.m., threw all the equipment and furniture out of the window and set it on fire. According to the applicants, throughout these events they made a number of telephone calls to the police station located some 500 metres from the party headquarters, but were apparently told that no officers were available to come out. The applicants submitted that the public prosecutor's office took no action against those involved in the incidents. However, criminal proceedings for inciting discord were brought against four members of the party, including the second and third applicants, under Article 192 of the Criminal Code. The bill of indictment stated that "they had affixed to the party headquarters a sign on which, among other things, the word *vino-zito* (rainbow) was written in a Slavic language, and had thus sowed discord among the local inhabitants ...". The applicants were committed for trial.

16. The trial took place on 15 September 1998 before a single judge in the Florina Criminal Court, who acquitted the applicants (judgment no. 979/1998). The court acknowledged that a crowd had gathered in front of the party headquarters and that one of the applicants had been beaten up. It found that there had also been criminal damage, which had culminated in the premises being set on fire.

17. On 5 December 1995 four party members, including the second and third applicants, lodged a criminal complaint and applied to be joined to the proceedings as civil parties, alleging that those responsible for the incidents had committed the following offences: incitement to discord (Article 192 of the Criminal Code), breach of the peace (Article 189), destruction of property (Article 381), criminal damage (Article 330), trespass (Article 334), threats (Article 333), insults (Article 361) and arson (Article 264).

18. On 24 November 1999 the Indictments Division of the Florina Criminal Court considered that there was insufficient evidence against the individuals named in the applicants' complaint and decided to discontinue criminal proceedings against them (order no. 30/1999).

19. On 10 December 1999 the applicants appealed.

20. On 4 April 2000 the Indictments Division of the Court of Appeal for West Macedonia dismissed the appeal (order no. 27/2000).

21. On 4 May 2000 the applicants appealed on points of law.

22. On 30 January 2003 the Criminal Division of the Court of Cassation dismissed their appeal as inadmissible (order no. 176/2003).

II. RELEVANT DOMESTIC LAW

23. The relevant provisions of the Criminal Code read as follows:

Article 189 – Breach of the peace

"1. Anyone who takes part in an unlawful assembly, ... attacks persons or property, or forcibly enters houses, dwellings or other premises belonging to another, shall be punished by a prison sentence of up to two years.

2. The perpetrators of such an attack and anyone who has incited another to commit the attack shall be punished by a prison sentence of at least three months.

3. The above-mentioned sentences shall be imposed unless the offence attracts a harsher sentence under a different provision."

Article 192 – Incitement of citizens to discord

"Anyone who, publicly or otherwise, provokes others to commit a violent act or sows discord among citizens, or incites citizens to do so, thus causing a breach of the peace, shall be punished by a prison sentence of up to two years, unless the offence attracts a harsher sentence under a different provision."

THE LAW

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II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

31. The applicants complained of interference with their freedom of association on account of the acts directed against them, the participation of the clergy and municipal authorities in those acts, and the inactivity of the police when a group of demonstrators broke into and ransacked the party headquarters. They relied on Article 11 of the Convention, which reads as follows:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. The parties' submissions

32. The Government noted that the crux of the present dispute was the removal of the sign bearing the impugned inscription. They observed that the term *vino-zito*, written on the sign in a "Slavic alphabet", had a strong historical connotation. It had been used as the rallying cry of forces seeking to capture the town of Florina during the civil war in Macedonia. In the Government's view, feelings of discord among the inhabitants of Florina could be provoked simply by mentioning this term, since it reminded them of the civil war which followed the Second World War, and during which lives were lost and properties destroyed. The Government added that the sign had been removed in accordance with the relevant provisions of the Code of Criminal Procedure. However, the applicants had put the sign back. In addition, the Government claimed that the local police had not adopted a passive attitude towards the incidents stirred up by the crowd. In this connection, they stressed that when the sign had been taken down by the police officers, police intervention had not been necessary because the tension in the crowd had subsided anyway. The police could not have predicted that the situation would deteriorate in the following hours and thus could not have acted accordingly.

33. In response, the applicants argued that by adding the word *vino-zito* to the sign, they had only wished to translate the meaning of their party's name "into Macedonian", without intending to sow discord among the inhabitants of Florina. They considered that the removal of the sign had not been carried out on any statutory basis and had thus been an arbitrary act. Moreover, putting the sign back had not been unlawful but had been consonant with their freedom of political expression. Concerning the attack on the party headquarters, they maintained that it had been instigated by the clergy and town council of Florina. With the aid of municipal civil servants, some of the town councillors had participated, together with the crowd, in the acts of criminal damage. Lastly, they noted that the police had failed in their obligation to intervene in order to prevent the headquarters from being ransacked and had not conducted an effective investigation with the aim of arresting and punishing those responsible.

B. The Court's assessment

1. General principles

34. The Court has, on a number of occasions, confirmed the essential role played by political parties in democratic systems, where they are afforded rights and freedoms under Article 11 of the Convention and also under Article 10. Political parties are a form of association essential to the proper functioning of democracy (see *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, p. 17, § 25). It is in the nature of the role they play that political parties, the only bodies which can come to power, also have the capacity to influence the whole of the regime in their countries. By the proposals for an overall societal model which they put before the electorate and by their capacity to implement those proposals once they come to power, political parties differ from other organisations which intervene in the political arena. In view of their role, any measure taken against them affects freedom of association and therefore the state of democracy in the country concerned (see *Socialist Party of Turkey (STP) and Others v. Turkey*, no. 26482/95, § 36, 12 November 2003).

35. Further, the notion of "democratic society" is devoid of any meaning if there is no pluralism, tolerance or open-mindedness. In particular, pluralism is built on, for example, the genuine recognition of, and respect for, diversity and the dynamics of traditions and of ethnic and cultural identities. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 92, ECHR 2004-I). Accordingly, the fact that their activities form part of a collective exercise of freedom of expression also entitles political parties to seek the protection of Article 10 of the Convention (see *United Communist Party of Turkey and Others*, cited above, pp. 20-21, § 43). As the Court has often reiterated, the protection of opinions and the freedom to express them is one of the objectives of the freedom of association as enshrined in Article 11.

36. The Court habitually acknowledges that Article 11 of the Convention also takes on a negative aspect: public authorities must abstain from arbitrary measures capable of interfering with the right of free assembly and association. In this context the Court has had occasion to examine measures under Article 11 which involve the restriction of an individual's participation in a peaceful assembly (see *Ezelin v. France*, judgment of 26 April 1991, Series A no. 202, p. 23, § 53), the refusal to register an association (see *Gorzelik and Others*, cited above, §§ 104 et seq., and *Sidiropoulos and Others v. Greece*, judgment of 10 July 1998, *Reports* 1998-IV, pp. 1617-18, §§ 46-47), and the dissolution of a political party (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC],

nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 135, ECHR 2003-II). In view of the essential nature of freedom of association and its close relationship with democracy there must be convincing and compelling reasons to justify such interference with this freedom.

37. Moreover, the Court has often reiterated that the Convention is intended to guarantee rights that are not theoretical or illusory, but practical and effective (see *Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, pp. 15-16, § 33, and, more recently, *United Communist Party of Turkey and Others*, cited above, pp. 18-19, § 33). It follows from that finding that a genuine and effective respect for freedom of association cannot be reduced to a mere duty on the part of the State not to interfere; a purely negative conception would not be compatible with the purpose of Article 11 nor with that of the Convention in general. There may thus be positive obligations to secure the effective enjoyment of the right to freedom of association (see *Wilson, National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, § 41, ECHR 2002-V) even in the sphere of relations between individuals (see *Plattform "Ärzte für das Leben" v. Austria*, judgment of 21 June 1988, Series A no. 139, p. 12, § 32). Accordingly, it is incumbent upon public authorities to guarantee the proper functioning of an association or political party, even when they annoy or give offence to persons opposed to the lawful ideas or claims that they are seeking to promote. Their members must be able to hold meetings without having to fear that they will be subjected to physical violence by their opponents. Such a fear would be liable to deter other associations or political parties from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right of association (see, *mutatis mutandis*, *Plattform "Ärzte für das Leben"*, ibid.).

2. Application of the above principles to the instant case

38. In the present case it is for the Court to examine whether the obligations arising from Article 11 of the Convention were fulfilled by the domestic authorities.

39. The Court notes that, on 13 September 1995, the Florina police removed the sign on which the party's name was written in Macedonian. The Government justified that act by the negative historical connotation of the word *vino-zito* written on the sign in Macedonian. In particular, they argued that the word had been used as the rallying cry of forces seeking to capture the town of Florina during the civil war in Macedonia. In the Government's view, reference to this term was capable by itself of provoking feelings of discord among the inhabitants of Florina.

40. The Court considers that mention of the consciousness of belonging to a minority and the preservation and development of a minority's culture

cannot be said to constitute a threat to "democratic society", even though it may provoke tensions (see *Sidiropoulos and Others*, cited above, p. 1615, § 41). The emergence of tensions is one of the unavoidable consequences of pluralism, that is to say the free discussion of all political ideas. Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing political groups tolerate each other (see *Plattform "Ärzte für das Leben"*, cited above, p. 12, § 32, and *Serif v. Greece*, no. 38178/97, § 53, ECHR 1999-IX).

41. In the instant case the Court observes that the Ouranio Toxo party is a lawfully constituted party, one of whose aims is the defence of the Macedonian minority living in Greece. Affixing a sign to the front of its headquarters with the party's name written in Macedonian cannot be regarded as reprehensible or considered to constitute in itself a present and imminent threat to public order. The Court accepts that the use of the term *vino-zito* certainly aroused hostile sentiment among the local population. Its ambiguous connotations were liable to offend the political or patriotic views of the majority of the population of Florina. However, the risk of causing tension within the community by using political terms in public does not suffice, by itself, to justify interference with freedom of association.

42. An additional question raised by this case is whether the attitude of the public authorities contributed to exacerbating the tension. In this connection the Court notes that the local authorities, two days before the incidents, had clearly incited the population of Florina to gather in protest against the applicants and some of their members had taken part in the protests (see paragraphs 13-14 above). They thus contributed through their conduct to arousing the hostile sentiment of a section of the population against the applicants. The Court considers that the role of State authorities is to defend and promote the values inherent in a democratic system, such as pluralism, tolerance and social cohesion. In the present case, it would have been more in keeping with those values for the local authorities to advocate a conciliatory stance, rather than to stir up confrontational attitudes.

43. Lastly, the Court must examine whether the police sufficiently guaranteed the protection of the party's premises. In this connection it notes that they could reasonably have foreseen the danger that the tension would boil over into violence and clear violations of freedom of association. The day that the sign in question was put back, groups of people had gathered in front of the party headquarters shouting insults and threats at the applicants. The State should therefore have taken appropriate measures to prevent or, at least, contain the violence. However, the Court cannot but find that the public authorities failed to take the measures necessary in the circumstances of the case. The Court thus observes that, when the headquarters were being attacked, the applicants allegedly called several times for the assistance of the police, who were located 500 metres away. They justified their failure to

intervene by claiming that no officers were available to be dispatched to the scene. However, the Government gave no explanation for the lack of police manpower even though the incidents had been predictable. Further, the Court cannot overlook the fact that the public prosecutor did not consider it necessary to start an investigation in the wake of the incidents to determine responsibility. It was only once the applicants had lodged a complaint that the investigation began. In cases of interference with freedom of association by acts of individuals, the competent authorities have an additional obligation to take effective investigative measures (see, *mutatis mutandis*, Özgür Gündem *v. Turkey*, no. 23144/93, § 45, ECHR 2000-III).

44. For the foregoing reasons, the Court finds that by both their acts and their omissions the national authorities breached Article 11 of the Convention.

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FOR THESE REASONS, THE COURT

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2. *Holds* unanimously that there has been a violation of Article 11 of the Convention;

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Done in French, and notified in writing on 20 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN Registrar	Loukis LOUCAIDES President

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