

In the case of Farmakopoulos v. Belgium\*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")\*\* and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. Ryssdal, President,  
Mr J. Cremona,  
Mr L.-E. Pettiti,  
Mr B. Walsh,  
Mr R. Macdonald,  
Mr C. Russo,  
Mr J. De Meyer,  
Mr R. Pekkanen,  
Mr F. Bigi,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 28 November 1991 and 25 March 1992,

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

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#### Notes by the Registrar

\* The case is numbered 1/1991/253/324. 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.

\*\* As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

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#### PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 8 March 1991, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 11683/85) against the Kingdom of Belgium lodged with the Commission under Article 25 (art. 25) by Mr Georgios Farmakopoulos, a Greek national, on 4 July 1985.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Belgium recognised the compulsory jurisdiction of the Court (Article 46) (art. 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 Article 5 para. 4 (art. 5-4).

2. Despite several reminders and the efforts of his counsel, the applicant, whose current address was supplied by the Greek Government following a request by the Registrar (Rule 31), did not respond to the Registrar's enquiry as to whether he wished to take part in the proceedings (Rule 33 para. 3 (d)), and did not claim any just satisfaction

(Article 50 of the Convention and Rule 50 in conjunction with Rule 1(k) of the Rules of Court) (art. 50).

3. The Chamber to be constituted included ex officio Mr J. De Meyer, the elected judge of Belgian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 22 March 1991, in the presence of the Registrar, Judge Matscher, having been duly delegated by the President, drew by lot the names of the other seven members, namely Mr J. Cremona, Mr L.-E. Pettiti, Mr B. Walsh, Mr R. Macdonald, Mr C. Russo, Mr R. Pekkanen and Mr F. Bigi (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Belgian Government ("the Government") and the Delegate of the Commission on the organisation of the procedure (Rule 37 para. 1 and Rule 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 31 July 1991. On 14 October the Delegate of the Commission informed him that he would submit his observations at the hearing.

5. On 4 November the Secretary to the Commission produced various documents relating to 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 26 November 1991. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

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| Mr J. Lathouwers, Legal Officer, Ministry of Justice, | Deputy Agent, |
| Mr P. Lemmens, avocat,                                |               |
| Mr J.-F. Romain, avocat,                              | Counsel;      |

(b) for the Commission

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| Mr F. Martinez, | Delegate. |
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The Court heard addresses by Mr Lemmens for the Government and Mr Martinez for the Commission, as well as their replies to its questions.

#### AS TO THE FACTS

7. Mr Georgios Farmakopoulos, who is a Greek national, is currently in prison in Athens (Greece).

8. He was apprehended on 11 January 1985 while passing through Belgium and provisionally detained on the next day, following a radiogram from the Chief Constable of Cambridgeshire (United Kingdom) requesting his extradition on the basis of two warrants for his arrest issued in Cambridge, one for murder, the other for theft.

9. As neither of the warrants had been served within the statutory time-limit, the Belgian Minister of Justice ordered on 26 January that the applicant should leave Belgian territory and that he should remain in custody in the meantime pursuant to section 7 of the Aliens Law. He was due to be

deported to Argentina on 7 February; that country had been finally chosen by Mr Farmakopoulos, who had initially opted for France.

10. At midday on 6 February the applicant was served with copies of the two British warrants, which had arrived at Brussels on the previous day, and the order giving them effect, which had been issued in Dutch on 6 February by the Committals Chamber (chambre du conseil) of the Antwerp Court of First Instance. The copy order did not mention the time-limit for appealing, which was only twenty-four hours, and the applicant has stated that no one had told him of it in any other way.

On handing the said documents to Mr Farmakopoulos, the bailiff informed him that the public prosecutor (procureur du Roi) would within forty-eight hours ask him whether he required the statutory formalities of extradition to be carried out. He also suggested that he contact his lawyer immediately. The lawyer visited the prison at 7.00 p.m. on 7 February and lodged an appeal on the following day.

11. On 19 March 1985 the Indictments Chamber (chambre des mises en accusation) of the Antwerp Court of Appeal held that the appeal was inadmissible as being out of time. It said that the applicant should have appealed within twenty-four hours from the service of the order on him, in accordance with Article 135 of the Code of Criminal Procedure, which was applicable to the case.

Mr Farmakopoulos claimed that because of the illegality vitiating his detention at the time of service of the order, that service could not have started the relevant time-limit running. The court replied in effect that the sole aim of the detention in question, which was based on section 7 of the Aliens Law, was to remove him from Belgian territory and that the case-file did not show that the period strictly necessary for that purpose had been exceeded in any way. The bailiff had in any case, by means of his oral statements (see paragraph 10 above), put the applicant in a position to obtain information on the methods of appeal available to him, and there was nothing to show that he had been prevented from so doing.

12. The applicant then appealed to the Court of Cassation. It dismissed the appeal on 21 May 1985 (Pasicrisie, 1985, I, p. 1182). It confirmed that the period of twenty-four hours laid down by Article 135 of the Code of Criminal Procedure was applicable, and also held that there was no obligation, notably under paragraphs 2 and 4 of Article 5 (art. 5-2, art. 5-4) of the European Convention on Human Rights, to inform a person who had been arrested of the appeals available or the time-limits to be observed.

13. On 12 June Mr Farmakopoulos refused to waive compliance with the statutory formalities of extradition. He therefore appeared with his lawyer before the Indictments Chamber, which gave its opinion on 12 July.

14. Mr Farmakopoulos was extradited to the United Kingdom on 9 August 1985. He was sentenced to life imprisonment by the Norwich Crown Court on 4 March 1986, and then handed over to the Greek authorities.

#### PROCEEDINGS BEFORE THE COMMISSION

15. In his application of 4 July 1985 to the Commission

(no. 11683/85) Mr Farmakopoulos complained inter alia that he had been unable to take proceedings in accordance with Article 5 para. 4 (art. 5-4) of the Convention against the Committals Chamber's order of 6 February 1985.

16. On 8 February 1990 the Commission declared this complaint admissible and the remainder of the application inadmissible. In its report of 4 December 1990 (Article 31) (art. 31) it expressed the unanimous opinion that there had been a violation of Article 5 para. 4 (art. 5-4). The full text of the Commission's opinion is reproduced as an annex to this judgment\*.

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\* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 235-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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#### AS TO THE LAW

17. In support of their request that the case be struck out of the list, the Government relied on the applicant's silence and his complete failure to co-operate with the Court. They referred to Rule 49 para. 2 of the Rules of Court, which reads as follows:

"When the Chamber is informed of a friendly settlement, arrangement or other fact of a kind to provide a solution of the matter, it may, after consulting, if necessary, the Parties, the Delegates of the Commission and the applicant, strike the case out of the list."

The Court consulted the Delegate, but not Mr Farmakopoulos, whom it was unable to contact (see paragraph 2 above).

18. In the Commission's opinion, a case heard before the Court without the individual applicant was not equivalent to a default procedure or a withdrawal, in view of the applicant's position before the Court. Moreover, the present case was one of general interest.

19. Despite being approached by the registry on several occasions over a period of eight months - well in excess of the usual period of two weeks laid down by Rule 33 para. 3 (d) of the Rules of Court - Mr Farmakopoulos has shown no interest in the proceedings pending before the Court. Strictly speaking, this is not a withdrawal for the purposes of paragraph 1 of Rule 49, as the applicant is not a party to the case in view of the fact that Protocol No. 9 (P9), which authorises an individual applicant to refer a case to the Court subject to certain conditions, has not yet come into force (see, as the most recent authority, the *Dal Sasso v. Italy* judgment of 3 December 1991, Series A no. 223-N, pp. 130-131, para. 11). However, the Court considers that there has in the present case been an implied withdrawal, constituting a "fact of a kind to provide a solution of the matter" within the meaning of paragraph 2 of Rule 49.

In addition, it discerns no reason of ordre public (public policy) for continuing the proceedings (Rule 49 para. 4). These are concerned to a large extent with questions of fact, whose examination would furthermore require additional information on the facts of the case. The Court

does not consider it necessary to seek to obtain this information of its own motion.

Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing under Rule 55 para. 2, second sub-paragraph, of the Rules of Court on 27 March 1992.

Signed: Rolv RYSSDAL  
President

Signed: Marc-André EISSEN  
Registrar