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

CASE OF TWALIB v. GREECE

(42/1997/826/1032)

JUDGMENT

STRASBOURG

9 June 1998

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

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2], as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr J. DE MEYER,
Mr N. VALTICOS,
Mr I. FOIGHEL,
Mr J. MAKARCZYK,
Mr P. JAMBREK,
Mr P. KŪRIS,
Mr J. CASADEVALL,
Mr P. VAN DIJK,

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

Having deliberated in private on 28 February and 20 May 1998,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 16 April 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 24294/94) against the Hellenic Republic lodged with the Commission under Article 25 by a Tanzanian national, Mr Mosses Twalib, on 6 April 1993.

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 5 § 2 and 6 of the Convention.

Notes by the Registrar

[1]. The case is numbered 42/1997/826/1032. 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.

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).

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 28 April 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Macdonald, Mr J. De Meyer, Mr I. Foighel, Mr P. Jambrek, Mr P. Kūris, Mr J. Casadevall and Mr P. van Dijk (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr R. Bernhardt, the Vice-President of the Court, and Mr J. Makarczyk, substitute judge, replaced Mr Ryssdal and Mr Macdonald respectively, who were unable to take part in the further consideration of the case (Rules 21 § 6, second sub-paragraph, 22 § 1 and 24 § 1).

4. As President of the Chamber at the time (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 orders made in consequence, the Registrar received the applicant's and the Government's memorials on 12 and 14 November 1997 respectively.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 26 February 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*
Mr G. KANELLOPOULOS, Adviser,
State Legal Council, *Delegate of the Agent*,
Mr C. GEORGIADIS, Legal Assistant,
State Legal Council, *Adviser*;

(b) *for the Commission*
Mr G. RESS, *Delegate*;

(c) *for the applicant*
Mr S. TSAKYRAKIS, *Advocate*, Athens Bar, *Counsel,*
Ms E. KIOUSSOPOULOU, Lawyer, *Adviser.*

The Court heard addresses by Mr Ress, Mr Tsakyrakis, Mr Georgiadis and Mr Kanellopoulos.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicant

6. The applicant is a Tanzanian national born in 1957 and currently resident in Tanzania. He is a seaman.

In 1986 he was convicted in Greece of drug-related offences and sentenced to imprisonment. He was released in November 1989 and expelled from Greece.

B. The facts of the case

7. On 16 February 1990 a Mr G.C. was arrested at Athens Airport for transporting drugs. A telephone number was found on him which, when traced, turned out to be that of a hotel in Piraeus where the applicant, having returned to Greece, was staying at the time. This hotel was visited by the police.

The applicant was found to be in possession of a forged passport. It appears, however, that no drugs and no other incriminating evidence were found in his possession.

8. The applicant was arrested and taken to Athens the same day and interrogated by the police. According to an official report, the applicant claimed not to understand Greek but to speak English, and he was assisted by a police officer, H.L., who was an English-speaker and acted as interpreter.

It is also stated in the report that the applicant was questioned about the matters that had led to his arrest and about the forged passport found in his possession. He provided full particulars of his movements following his expulsion from Greece three months earlier (see paragraph 6 above) but denied all involvement in drug trafficking.

The police questioned him again the following day. The police officer H.L. again acted as interpreter.

9. On 18 February 1990 the applicant was brought before the public prosecutor, who instituted criminal proceedings against him for forgery and various drug-related offences. The applicant does not dispute that he was assisted by an interpreter on this occasion.

The applicant was then brought before the investigating judge, who read out the charges to him.

It appears from an official report of this event that the applicant was assisted before the investigating judge by a lawyer who spoke English and acted as interpreter.

10. On 20 February 1990 the applicant again appeared before the investigating judge, to whom he made a statement. It appears from an official report that he was assisted by Mr A., a lawyer practising in Athens, and by an English-speaking clerk of the court who acted as interpreter.

The investigating judge ordered the applicant to be detained on remand.

11. On 21 June 1991 the applicant and three co-accused appeared before a three-judge Chamber of the Athens Court of Appeal (*trimeles efetio*), the court competent to hear the case at first instance in view of the seriousness of the charges. A court-assigned interpreter was present. The applicant stated that he was defended by Mr A. and, since Mr A. was not present (being at that time on strike), he asked for an adjournment. The co-accused made similar requests. The case was adjourned.

12. The applicant and his co-accused appeared before the same court again on 12 July 1991. A court-appointed interpreter was present. As the applicant's lawyer, Mr L., was absent, the court asked the lawyer of one of the co-accused, a Mr N., to act for the applicant as well. This Mr N. agreed to do, and it appears from the official record of the hearing that "a short interval" was ordered to enable him to study the applicant's case file.

13. On 16 July 1991 the three-judge Chamber of the Athens Court of Appeal found the applicant guilty of importing and transporting drugs and using forged documents. It sentenced him to life imprisonment and a fine of 6,000,000 drachmas for the drug-related offences and to eight months' imprisonment for having used forged documents.

The applicant appealed.

14. The appeal was heard by the five-judge Chamber of the Athens Court of Appeal on 18 March 1993, which, as a matter of general principle of the Greek law of criminal procedure, was empowered to review all questions of fact and of law in the case. The applicant was again assisted by a court-assigned interpreter and was defended by Mr E.L., a lawyer provided by a humanitarian organisation.

15. The court convicted the applicant only of collusion in the importation and transport of drugs and the use of forged documents and acquitted him on the remainder of the charges. It sentenced him to twelve years' imprisonment for the drug-related offences and three months' imprisonment for the use of forged documents, and imposed a fine of

5,000,000 drachmas. The judgment was delivered on the day of the hearing but finalised (*katharographi*) on 4 May 1993. According to the minutes of the appeal hearing, the president of the court duly informed all the accused, including the applicant, of the time-limit for filing an appeal on points of law, and this information was interpreted for the benefit of the applicant.

16. The applicant lodged an appeal on points of law on 26 March 1993, by filling in a standard appeal form which he handed in to the prison authorities. In the space reserved for grounds of appeal the applicant stated that these would be submitted in due course by his counsel. On the same form he mentioned Mr P. under the heading "Lawyer to whom notifications should be made".

17. On 8 June 1993 the applicant, through the prison authorities, addressed a petition to the public prosecutor at the Court of Cassation (*Arios Pagos*) enquiring whether legal-aid counsel could be appointed to assist him in the preparation of his appeal. The prison authorities acknowledged receipt of this petition.

18. On 12 July 1993 the Court of Cassation declared the applicant's appeal on points of law inadmissible on the ground that no grounds of appeal had been submitted.

19. On 4 April 1994 the applicant addressed a second petition to the public prosecutor at the Court of Cassation, referring to his financial situation and enquiring about any developments in his case. The prison authorities acknowledged receipt.

20. On 27 April 1994 the applicant was informed by the prison authorities that his appeal had been dismissed.

21. In a letter of 23 February 1995 to the Agent of the Government, the deputy public prosecutor at the Court of Cassation stated that he had not been able to trace any petition from the applicant to either the president or the public prosecutor at the Court of Cassation asking for legal aid. He further submitted that the courts were under no legal obligation to appoint legal-aid counsel for accused persons who appealed on points of law. Nor was any other public authority. Consequently, even if the applicant had submitted a petition for legal aid, the authorities of the Court of Cassation would have been under no obligation to reply.

II. RELEVANT DOMESTIC LAW

22. Article 340 § 1 of the Code of Criminal Procedure provides that in cases of the most serious category of criminal offence (*kakouryimata*) the

president of the first-instance court must assign counsel to an accused who is not represented. Counsel is chosen from a list of lawyers drawn up by the local Bar in January of each year. Counsel is to be appointed at least three days before the hearing, if the accused so requests, by a letter to the public prosecutor or the president of the trial court, and is given access to the case file.

Article 376 of the Code of Criminal Procedure provides that in cases concerning the most serious category of crime the president of the appellate court must appoint counsel for an undefended accused if the latter so requests. Article 340 § 1 applies *mutatis mutandis*.

23. Article 473 §§ 1 and 3 of the Code of Criminal Procedure provides that persons who appeal on points of law must lodge their appeal within ten days from the finalisation of the judgment (*katharographi*), i.e. the entering of the judgment in a special book kept at the registry of the criminal court. According to Article 474 of the Code, the appeal must be lodged by making a declaration to that effect before one of various public authorities, including the governor of the prison where the appellant is detained. An official report is drawn up, which must contain the grounds of the appeal. Article 473 § 2 of the Code provides for a further twenty-day period within which an accused may appeal on points of law against conviction by making a declaration to that effect to the public prosecutor at the Court of Cassation.

24. Article 510 of the Code of Criminal Procedure contains an exhaustive enumeration of the grounds for appealing on points of law. These include a number of procedural irregularities in addition to errors in the interpretation or application of substantive criminal law. Pursuant to Articles 476 § 1 and 513 § 1 of the Code of Criminal Procedure, as interpreted by the Court of Cassation, an appeal on points of law which does not state any grounds is inadmissible (Court of Cassation decisions no. 1438/1986, *Pinika Hronika,* vol. 37, p. 170; no. 73/1987, *Pinika Hronika,* vol. 37, p. 314; and no. 182/1987, *Pinika Hronika,* vol. 37, p. 605).

25. Under Article 509 § 2 of the Code of Criminal Procedure, the appellant may submit "additional grounds" of appeal by lodging a supplementary pleading with the Principal Public Prosecutor at the Court of Cassation not later than fifteen days before the hearing. However, according to the settled case-law of the Court of Cassation, "additional grounds" may be taken into account only if at least one admissible and sufficiently substantiated ground is set out in the initial notice of appeal (Court of Cassation decisions nos. 242/1951, 341/1952, 248/1958, 472/1970, 892/1974, 758/1979, *Nomiko Vima* 1980, p. 56, 647/1983, 1438/1986 and

1453/1987, *Pinika Hronika,* vol. 38, p. 191). Notwithstanding this case-law, an accused may use the time allowed by Article 473 § 2 of the Code (see paragraph 23 above) to supplement an appeal on points of law lodged with one of the authorities mentioned in Article 474 of the Code where the notice of appeal does not contain any "sufficiently substantiated grounds of appeal".

26. Under Article 513 § 3 of the Code of Criminal Procedure, the parties to an appeal on points of law must be represented by counsel at the hearing before the Court of Cassation. The Court of Cassation has held that the Code of Criminal Procedure does not provide for legal aid for appeals on points of law and that Article 6 § 3 (c) of the Convention does not apply to proceedings before the Court of Cassation as these do not entail the determination of a criminal charge (Court of Cassation decisions no. 381/1982, *Pinika Hronika,* vol. 32, p. 928; no. 724/1992, *Pinika Hronika,* vol. 32, p. 656; and no. 1368/1992).

27. Pursuant to Article 546 § 2 of the Code of Criminal Procedure, a conviction becomes final when there is no appeal against the relevant decision, or when the accused has not availed himself of the possibility of appealing, or when the accused has appealed within the time provided by law and his appeal has been dismissed.

PROCEEDINGS BEFORE THE COMMISSION

28. Mr Twalib applied to the Commission on 6 April 1993. He complained that at the time of his arrest he had not been notified of the charges in a language he could understand (Article 5 § 2 of the Convention), that he had not been assisted by an interpreter when he was first examined by the police, the public prosecutor and the investigating judge (Article 6 §§ 1 and 3 (e)), that the lawyer appointed by the trial court had not had sufficient time and facilities to prepare his defence (Article 6 §§ 1 and 3 (b)) and that he had not been granted legal aid for the preparation and hearing of his case in the proceedings before the Court of Cassation (Article 6 §§ 1 and 3 (c)).

29. The Commission declared the application (no. 24294/94) admissible on 26 February 1996. In its report of 25 February 1997 (Article 31), it expressed the opinion that (i) there had been a violation of Article 6 §§ 1 and 3 (c) (unanimously); (ii) there had been no violation of Article 6 §§ 1 and 3 (b) (twenty-four votes to six); (iii) there had been no violation of Article 6 §§ 1 and 3 (e) (unanimously); and (iv) there had been no violation

of Article 5 § 2 (unanimously). The full text of the Commission's opinion and of the partly dissenting opinion contained in the report is reproduced as an annex to this judgment[3].

FINAL SUBMISSIONS TO THE COURT

30. In his memorial and at the hearing the applicant requested the Court to find that the facts of the case disclosed a breach by the respondent State of Article 6 § 1 taken together with paragraph 3 (b) and (c) of the Convention. He did not reiterate the complaints under Article 5 § 2 and Article 6 §§ 1 and 3 (e) which had been submitted to the Commission. He also requested the Court to award him just satisfaction under Article 50.

31. The Government for their part requested the Court both in their memorial and at the hearing to declare the case inadmissible on account of the applicant's failure to exhaust domestic remedies. In the alternative, they requested the Court to dismiss the applicant's complaints as disclosing no breach of the Convention.

AS TO THE LAW

I. THE SCOPE OF THE CASE

32. The Court observes that the Commission, when referring the case to it, asked for a decision on whether the facts gave rise, *inter alia,* to breaches of Article 5 § 2 and Article 6 § 1 taken in conjunction with paragraph 3 (e) of the Convention (see paragraph 1 above). In the Commission's opinion, there had been no violation of these provisions in the present case.

33. However, in the light of the Commission's findings, the applicant affirmed in his pleadings before the Court that he did not wish to pursue these complaints. At the hearing the Government did not specifically address the complaints whereas the Delegate of the Commission took note of the fact that the applicant had not maintained them before the Court.

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[3]. *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* 1998), but a copy of the Commission's report is obtainable from the registry.

In these circumstances the Court confines its examination to the applicant's complaints under Article 6 § 1 taken together with paragraph 3 (b) and (c).

II. THE GOVERNMENT'S PRELIMINARY OBJECTION

34. The Government claimed, as they had done before the Commission, that the applicant's complaints should be declared inadmissible since he had not exhausted domestic remedies as required by Article 26 of the Convention.

They pointed out that, although the applicant had been informed by the president of the Court of Appeal about the legal requirements for filing an appeal on points of law (see paragraph 15 above), he had nevertheless failed to state the grounds of appeal in his written notice of appeal with the result that the Court of Cassation had to declare the appeal inadmissible (see paragraphs 16 and 18 above). He had therefore failed to exhaust the remedies which were available to him under national law.

35. The Court considers that the Government's arguments on the issue of exhaustion of domestic remedies are closely linked to the merits of the applicant's complaint under Article 6 § 3 (c) concerning the unavailability of legal aid in respect of his appeal on points of law. The Government's plea should therefore be joined to the merits (see, *mutatis mutandis*, the Kremzow v. Austria judgment of 21 September 1993, Series A no. 268-B, p. 41, § 42).

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN CONJUNCTION WITH PARAGRAPH 3 (b)

36. The applicant complained that, since the lawyer representing him in the first-instance proceedings before the three-judge Chamber of the Athens Court of Appeal had not had adequate time and facilities for the preparation of his defence, there had been a violation of Article 6 §§ 1 and 3 (b) of the Convention, which in so far as relevant read:

> "1. In the determination of … any criminal charge …, everyone is entitled to a fair … hearing … by [a] … tribunal established by law…
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> …
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
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> …
>
> (b) to have adequate time and facilities for the preparation of his defence;"

A. Arguments of those appearing before the Court

37. The applicant pointed out that his counsel had been appointed by the trial court during the hearing and had been given less than an hour to study his case file (see paragraph 12 above). Furthermore, the counsel appointed could not properly represent his interests as he was also representing another co-accused whose interests were in conflict with his own. As the first-instance proceedings had resulted in his conviction, this had had a prejudicial impact on his position in the appeal proceedings. He contended that the Court of Appeal should in the circumstances have quashed his conviction and ordered a retrial.

38. The Government emphasised that the lawyer appointed by the trial court to represent the applicant had been familiar with the case since he was also representing another defendant in the same proceedings. The time afforded to the lawyer had therefore been sufficient for the preparation of the defence. Furthermore, neither the applicant nor his appointed counsel had asked the court to allow more time for the preparation of the defence and the applicant had not raised any objections to the counsel appointed by the trial court. In any event, in the view of the Government any defects in the first-instance proceedings had been cured on appeal.

39. The Commission noted that the charges against the applicant had been re-examined in the appeal proceedings. As it was not contested by the applicant that he was effectively represented at the appeal hearing, the Commission concluded that there had been no violation of Article 6 §§ 1 and 3 (b) of the Convention. The Delegate of the Commission added that, although the applicant's first-instance lawyer had been afforded less than an hour to consult the case file, he was largely familiar with the case as he was also representing a co-accused.

B. The Court's assessment

40. The Court observes that, as the applicant's counsel did not appear at the hearing in the first-instance proceedings, the court assigned to him the same lawyer who was appearing on behalf of one of his co-accused. Despite the seriousness of the offence with which the applicant was accused and the complexity of the case, his lawyer was afforded very limited time to consult the case file and prepare the applicant's defence. In view of the applicant's submission that there was a conflict of interests between him and his co-accused, the brevity of this period of preparation can hardly be defended on the basis of the argument that the lawyer, as the representative of the co-accused, was largely familiar with the case.

There were therefore serious shortcomings in the fairness of the proceedings at first instance which may have adversely affected the position of the applicant.

41. However, it must be observed that, on appeal, when he was represented by a different lawyer, the applicant challenged his conviction and sentence before the five-judge Chamber of the Athens Court of Appeal, which was empowered to examine all questions of fact and of law arising in the case and to quash the impugned judgment (see paragraph 14 above; and the Belilos v. Switzerland judgment of 29 April 1988, Series A no. 132, pp. 31–32, § 72). It does not appear from the evidence that the applicant's lawyer contended on appeal that the conviction was unsafe and that a retrial should be ordered on account of the defects in the applicant's representation at first instance; nor is there any clear indication that the appellate court could assume that there had been a defect in the first-instance proceedings without being alerted to the matter (see the Kerojärvi v. Finland judgment of 19 July 1995, Series A no. 322, p. 16, § 42).

42. Be that as it may, the five-judge Chamber of the Athens Court of Appeal – with full competence to consider questions of both fact and law – reached its conclusion after having held a hearing, at which the applicant and his counsel were present. Given that the applicant had the opportunity to raise the alleged deficiency at the appeal hearing and that there is nothing to suggest that the fairness of the appeal proceedings could be called into question, the Court finds that there has been no violation of Article 6 § 1 in conjunction with paragraph 3 (b) in the instant case.

43. In the light of the foregoing, the Court finds that there has been no violation of Article 6 § 1 in conjunction with paragraph 3 (b) of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN CONJUNCTION WITH PARAGRAPH 3 (c)

44. The applicant complained that under the law of the respondent State it had not been possible for him to obtain free legal assistance in connection with his appeal to the Court of Cassation. He relied on Article 6 §§ 1 and 3 (c) of the Convention, which in as far as relevant provide:

> "1. In the determination of … any criminal charge …, everyone is entitled to a fair … hearing … by [a] … tribunal established by law…
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> …
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
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> …
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;"

45. The Government contested the above allegation, whereas the Commission shared the applicant's view that there had been a violation of the provisions invoked.

A. Principles

46. The Court observes that the right of an accused charged with a criminal offence to free legal assistance is one element, amongst others, of the concept of a fair trial in criminal proceedings (see, *inter alia*, the Pham Hoang v. France judgment of 25 September 1992, Series A no. 243, p. 23, § 39).

In this connection, the Court recalls that the manner in which paragraph 1, as well as paragraph 3 (c), of Article 6 is to be applied in relation to appellate or cassation courts depends upon the special features of the proceedings involved; account must be taken of the entirety of the proceedings conducted in the domestic legal order and the role of the appellate or cassation court therein (see, *inter alia*, the Granger v. the United Kingdom judgment of 28 March 1990, Series A no. 174, p. 17, § 44; the Boner v. the United Kingdom judgment of 28 October 1994, Series A no. 300-B, p. 74, § 37).

B. Arguments of those appearing before the Court

47. The applicant stressed that there was a contradiction between the requirement under the domestic law of the respondent State that a party in cassation proceedings must be represented by a lawyer and the fact that legal aid was unavailable to those taking part in such proceedings (see paragraphs 21 and 26 above). He submitted that had he been granted legal assistance, and he had in fact requested such, his counsel would have been able to lodge a new appeal on points of law by way of follow-up to the notice of appeal which he submitted on 26 March 1993 (see paragraph 16 above). This would have resulted in his conviction being quashed by the Court of Cassation and a retrial ordered on the ground that he had been represented in the first-instance proceedings by a lawyer who had also represented another defendant at the same trial whose interests were in conflict with his own (see paragraph 12 above).

48. The Government maintained that the applicant's lack of financial resources had not been proved. They observed that he was represented by a lawyer of his own choice at the pre-trial investigation and that he had also appointed a lawyer when he appealed on points of law (see paragraph 16 above).

They also submitted that, contrary to the applicant's claims, no new appeal would have been possible since the appeal which he had lodged on 26 March 1993 did not specify the grounds of appeal relied on and for that reason was inadmissible. He had not indicated his indigence to the authorities until 8 June 1993, by which date the statutory time-limit for the submission of the appeal on points of law had already expired (see paragraphs 15, 17 and 23 above). Accordingly, even if the applicant's request of 8 June 1993 for free legal representation had been granted, he would still have been statute-barred from presenting a new appeal. In these circumstances, and having regard to the applicant's own negligence in not respecting the relevant requirements, it could not be maintained that the interests of justice required that he be granted free legal assistance.

In any event, the Government pointed out that the applicant could have been granted legal aid under Article 201 § 6 of the Greek Code of Lawyers had he submitted a timely application to the proper authorities. According to that provision the Bar Council was obliged to provide free legal assistance to appellants whom it considered to be indigent.

49. The Commission concluded that there had been a violation of Article 6 §§ 1 and 3 (c) on account of the fact that the applicant required but could not obtain legal aid for the purposes of his appeal on points of law. As to the sufficiency of his means, it noted that there were several factors which clearly pointed to his lack of financial resources to fund his own appeal, including the fact that he was represented before the trial and appeal courts by lawyers who had been either appointed by the court or made available by a humanitarian organisation and that at the time of lodging his appeal he had already been in prison for over three years.

50. As to whether the interests of justice required that he be granted legal aid, the Commission noted that regardless of whether or not the applicant was procedurally barred from lodging an additional appeal for the reasons stated by the Government (see paragraph 48 above), he was facing a prison sentence of twelve years and three months and that there existed grounds on which he could have challenged the fairness of his trial. However, as a layman and a foreigner unfamiliar with the Greek legal system he could not be expected in the absence of legal advice to know how to proceed with his appeal or which grounds to rely on. In these circumstances, the interests of justice required that the applicant be given legal aid in connection with his appeal on points of law. However, Greek law made no provision for the grant of legal aid for such an appeal and for that reason there had been a breach of Article 6 §§ 1 and 3 (c) in the instant case.

C. The Court's assessment

1. Absence of sufficient means to pay for legal assistance

51. The Court notes, like the Commission, the difficulties in assessing at this stage whether or not the applicant lacked at the relevant time sufficient means to pay for legal assistance in connection with his appeal on points of law. This is a question of fact and it is only in exceptional circumstances that the Court will depart from the facts as found by the Commission.

It observes that the Commission found that there were several indications which suggested that the applicant did require legal aid on account of his limited financial means. For its part, the Court considers that these indications, although not conclusive of the issue, also confirm to its satisfaction that the applicant was indigent (see, *mutatis mutandis*, the Pakelli v. Germany judgment of 25 April 1983, Series A no. 64, p. 16, § 34). In this respect it notes that the applicant was represented at his trial by court-appointed counsel and at the appeal proceedings by counsel provided by a humanitarian organisation (see paragraphs 11–12 and 14 above). Furthermore, it cannot be said that the mere reference to his counsel, Mr P., in his appeal form substantiates the Government's contention that the applicant had in fact secured and could pay for that lawyer's services (see paragraph 16 above). It is noteworthy that the applicant subsequently made two enquiries about the availability of legal aid (see paragraphs 17 and 19 above).

The Court also notes that the Commission decided to grant him legal aid in the proceedings before it on the ground that it was necessary in order to assist him in the presentation of his case. That grant has continued for the purposes of his representation before the Court.

In the light of the foregoing and in view of the absence of any clear indications to the contrary, the Court agrees with the Commission's finding that the applicant lacked sufficient means to pay for his legal representation in connection with his appeal to the Court of Cassation.

2. The interests of justice

52. As to whether the interests of justice required that the applicant receive free legal assistance, the Court recalls that he was accused of importing and transporting drugs and using forged documents. At the trial he was convicted and sentenced to life imprisonment and a fine of 6,000,000 drachmas (GRD) for the drug-related offences and to eight months' imprisonment for having used forged documents. This sentence

was reduced on appeal to twelve years' imprisonment for the drug-related offences and three months' imprisonment for the use of forged documents. The fine was reduced to GRD 5,000,000 (see paragraphs 13–15 above). In view of the seriousness of the offence for which he was convicted and the severity of the sentence imposed on him there can be no doubt that the interests of justice required that he be granted free legal assistance to pursue an appeal on points of law.

53. An additional factor is the complexity of the cassation procedure. It involved a challenge to the fairness of the trial proceedings which required him to adduce legal arguments which would convince the Court of Cassation that his defence rights had been vitiated. It is to be noted that the complexity of cassation proceedings is confirmed by the requirement that the parties must be represented by counsel at the hearing before the Court of Cassation (see paragraph 26 above). Further, the preparation of a notice of appeal must also be considered to require legal skills and experience and in particular knowledge of the grounds on which an appeal can be brought. It is noteworthy that the applicant, of foreign origin and unfamiliar with the Greek language and legal system, was unable to indicate any grounds of appeal in his written notice of appeal and that this failure resulted in his appeal being declared inadmissible (see paragraphs 16 and 18 above).

54. In these circumstances, the Court considers that the interests of justice required that the applicant be granted free legal assistance in connection with his intended appeal to the Court of Cassation.

3. The availability of legal aid under Greek law

55. The Court notes at the outset that under Article 513 § 3 of the Code of Criminal Procedure a party appealing on a point of law must be represented by counsel at the hearing before the Court of Cassation (see paragraph 26 above). However, according to the case-law of the Court of Cassation as confirmed by the letter of 23 February 1995 of the deputy public prosecutor at the Court of Cassation addressed to the Agent of the Government, the Code of Criminal Procedure does not provide for legal aid in connection with such appeals (see paragraphs 21 and 26 above). Although the Government have submitted that free legal assistance can be granted by the Bar Council to appellants in cassation proceedings under Article 201 § 6 of the Code of Lawyers (see paragraph 48 above), they have not provided any concrete examples of how this scheme operates in practice. In any event, there is nothing to suggest that the availability of this facility was brought to the attention of Mr Twalib or that his request of 8 June 1993 would have been forwarded to the Bar Council and would have received a favourable follow-up.

56. In these circumstances the Court must conclude that Greek law made no provision for the grant of legal aid to individuals like the applicant in connection with their appeals on points of law. It is accordingly not of relevance in the instant case that the applicant's request for legal aid was made after the expiry of the time-limit for the appeal: it could not have been complied with.

4. Conclusion

57. Having regard to the fact that the law of the respondent State made no provision for the grant of legal aid in connection with an appeal on points of law (see paragraph 56 above), the Court concludes that the Government's preliminary objection must be dismissed and that there has been a violation of Article 6 § 1 taken together with paragraph 3 (c) of the Convention.

V. APPLICATION OF ARTICLE 50 OF THE CONVENTION

58. The applicant claimed just satisfaction under Article 50 of the Convention, which provides:

> "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."

A. Pecuniary damage

59. Mr Twalib sought GRD 15,000,000 in respect of pecuniary damage. He maintained that the amount claimed was equal to the loss of earnings during his detention as he would have been able to work for a period of fifty months as a seaman earning GRD 300,000 per month. In his view, the amount claimed was reasonable as it represented the equivalent of the minimum wage in Greece earned over a period of fifty-seven months and increased by 30%.

60. The Government contested the applicant's claim since there was no causal link between the alleged violation and the alleged pecuniary damage. It had not been established that at the time of his arrest the applicant actually worked as a seaman. Furthermore, even if the applicant's appeal on points of law had been allowed it was not certain that he would have been acquitted had a retrial been ordered.

61. The Delegate of the Commission submitted that no causal link had been established between the alleged violation and the damage claimed. Furthermore, even if the applicant's rights under Article 6 of the Convention had been respected, it did not necessarily follow that he would have been acquitted.

62. The Court cannot speculate on whether or not the applicant would have been acquitted had he, with the benefit of free legal assistance, convinced the Court of Cassation of the need to order a retrial. As no causal link has been established in the instant case between the violation found and the claimed pecuniary damage the Court dismisses this claim.

B. Non-pecuniary damage

63. The applicant also sought GRD 10,000,000 in respect of non-pecuniary damage. He pointed to the anguish and despair he had suffered after being convicted to life imprisonment. Furthermore the applicant maintained that an award was necessary in order to encourage the Government to provide in the future legal aid in cassation proceedings.

64. The Government submitted that in the event that the Court found a violation, this finding would in itself constitute sufficient just satisfaction.

65. The Delegate of the Commission did not comment on the claim.

66. The Court is of the view that the applicant must be considered to have suffered some non-pecuniary damage as a result of the violation of his right to free legal assistance in the cassation proceedings which cannot be compensated by the finding of a violation alone. Deciding on an equitable basis, it awards the applicant GRD 1,500,000.

C. Costs and expenses

67. The applicant claimed 9,700 US dollars in respect of legal costs and expenses incurred in the proceedings before the Convention institutions.

68. The Government contended that, should the Court find a violation, the applicant should only be awarded those costs and expenses which could be proved to have been necessarily incurred and were reasonable as to quantum. They maintained that the presence of his counsel's assistant at the hearing had not been necessary and that his memorial submitted to the Court was identical to the additional observations submitted to the Commission and therefore warranted a reduction in the number of hours which his counsel claimed to have worked on the instant case. The applicant disputed this. The Government were of the view that any award made should not exceed the amount of GRD 600,000.

69. The Delegate of the Commission did not comment on the applicant's claims for costs and expenses.

70. The Court, in accordance with its own case-law, will consider whether the costs and expenses were actually and necessarily incurred in order to prevent or obtain redress in respect of a violation of the Convention and were reasonable as to quantum (see, *inter alia*, the Raninen v. Finland judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2825, § 73).

71. In the instant case, the Court observes that the applicant succeeded with respect to his complaint under Article 6 §§ 1 and 3 (c) of the Convention. It sees no reason to doubt that the costs relating to his pleadings on this point before the Court and his representation by two lawyers at the Court's hearing were necessarily incurred.

72. Deciding on an equitable basis the Court awards the applicant GRD 2,000,000, together with any value-added tax that may be chargeable, less 20,298 French francs already paid by way of legal aid.

D. Default interest

73. 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. *Joins* unanimously to the merits the Government's preliminary objection and *dismisses* it unanimously;

2. *Holds* by six votes to three that there has been no violation of Article 6 § 1 of the Convention in conjunction with paragraph 3 (b);

3. *Holds* unanimously that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention taken together;

4. *Holds* unanimously
   (a) that the respondent State is to pay the applicant, within three months, 1,500,000 (one million five hundred thousand) drachmas for non-pecuniary damage and 2,000,000 (two million) drachmas for costs and expenses, together with any value-added tax that may be chargeable, less 20,298 (twenty thousand two hundred and ninety-eight) French francs to be converted into drachmas at the rate in force on the date of settlement;
   (b) that simple interest at an annual rate of 6% shall be payable on those sums from the expiry of the above-mentioned three months until settlement;

5. *Dismisses* unanimously the remainder of the claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 June 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the partly dissenting opinion of Mr van Dijk, joined by Mr Makarczyk and Mr Jambrek, is annexed to this judgment.

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

PARTLY DISSENTING OPINION OF JUDGE VAN DIJK JOINED BY JUDGES MAKARCZYK AND JAMBREK

I shared the unanimous finding of a violation of Article 6 § 1 in conjunction with paragraph 3 (c) of the Convention. However, I could not join the majority where it found that Article 6 § 1 in conjunction with paragraph 3 (b) had not been violated.

In its judgment (paragraph 40) the Court observes that, in the proceedings at first instance, despite the seriousness of the offence of which the applicant was accused and the complexity of the case, the applicant's lawyer was afforded very limited time to consult the case file and prepare the applicant's defence. The Court gives as its opinion that, in view of the applicant's submission that there was a conflict of interest between him and his co-accused, the brevity of this period of preparation can hardly be defended on the basis of the argument that the lawyer, as the co-accused's representative, was largely familiar with the case.

In that context, the judgment could – and in my opinion should – also have referred to the fact that Greek law did not allow for the assignment of a lawyer where there was conflict of interest. Indeed, the mere fact that the first-instance court ignored that prohibition makes it questionable whether the applicant was given adequate facilities for the preparation of his defence.

Be that as it may, the Court reaches the conclusion that there were serious shortcomings in the fairness of the proceedings at first instance which may have adversely affected the position of the applicant. This rather strong criticism would seem to be a prelude to a finding of a violation of Article 6 § 1 in conjunction with paragraph 3 (b).

The decision of the majority that no such violation has occurred in the present case is based upon two arguments.

Firstly, the observation is made (paragraph 41) that there is no evidence that, on appeal, the applicant's lawyer contended that the conviction was unsafe and that a retrial should be ordered on account of the defects in the applicant's representation at first instance, nor that the appellate court could assume that there had been a defect in the first instance proceedings without having been alerted to the matter. What is the purport of that argument?

Is the majority implying that the applicant has not exhausted domestic remedies by not having raised the issue in substance on appeal? That might have been a valid defence for the Greek Government. However, no

objection as to admissibility on the basis of non-exhaustion of domestic remedies was raised by the Government in connection with the shortcomings of the first-instance proceedings, either before the Commission or before the Court. It is, of course, not for the Court to examine the fulfilment of the exhaustion requirement of its own motion.

Or does the majority instead intend to suggest by this argument that it could, after all, be concluded from the applicant's failure to raise the issue in the appeal proceedings that he himself did not consider that he was adversely affected by the shortcomings? If the latter is the case, I would submit that, after the applicant has passed the admissibility test, also with respect to the requirement of being a victim, and after the Court itself has found that the shortcomings were serious and of a kind that may have adversely affected the applicant's position, the applicant's opinion at a certain moment in the past as to whether he was adversely affected or not – an opinion moreover, that has never been expressed by him but would merely have been inferred from certain facts – cannot and should not have a decisive bearing on the decision as to whether there has been a violation.

The second argument advanced by the majority (paragraph 42) is that, after the first instance with its shortcomings in fairness, the applicant had a full review on appeal in proceedings which did meet the fairness standard. Although the majority does not expressly put it this way, this sounds as if, in the Court's opinion, the shortcomings of the first-instance proceedings have been remedied on appeal. But how can those shortcomings have been remedied if they were not brought to the attention of the appellate court and were not dealt with there? If under domestic law an accused is entitled to a hearing before an independent and impartial court with full jurisdiction at least at two levels, he is entitled to two sets of proceedings which each meet the requirements of fairness. If the first-instance proceedings fail to meet those requirements, that failure cannot be remedied simply by the fact that the appeal proceedings are fair; this would make the fairness issue of the first instance proceedings completely irrelevant. The failure would only be remedied if the appeal court, in view of the shortcomings in fairness, quashed the first-instance decision and ordered a retrial. That has not happened in the present case.

The Court's case-law concerning minor offences, in which it has held that the fact that a decision is taken in proceedings that do not meet the requirements of Article 6 may be remedied by the availability of a right of appeal to a tribunal that does offer these guarantees (see, *inter alia,* the Öztürk v. Germany judgment of 21 February 1984, Series A no. 73, pp. 21-22, § 56) does not apply to the present case where the applicant was sentenced to life imprisonment by the court of first instance and still to more than twelve years' imprisonment on appeal.

In the case of criminal charges for very serious crimes the guarantee of adequate facilities for the preparation of his defence is as important for the accused as the guarantee of the independence and impartiality of the court. Therefore, in my opinion, the Court should have followed, by analogy, its De Cubber judgment, where it held that, in view of the serious defect that vitiated the first-instance proceedings, "the Court of Appeal did not cure that defect since it did not quash on that ground the [decision of the first-instance court] in its entirety" (De Cubber v. Belgium judgment of 26 October 1984, Series A no. 86, p. 19, § 33).

For these reasons, the two arguments advanced by the majority for its conclusion that, despite the shortcomings it found regarding the fairness of the proceedings, Article 6 § 1 in conjunction with paragraph 3 (b) has not been violated, have not convinced me. Since the facts before us did not provide me with any other argument to reach that conclusion, I am of the opinion that Article 6 § 1 in conjunction with paragraph 3 (b) has been violated as well.