AS TO THE ADMISSIBILITY OF

Application No. 23169/94
by Georgios ANOMERITIS
against Greece

The European Commission of Human Rights (First Chamber) sitting in private on 11 January 1995, the following members being present:

Mrs. J. LIDDY, Acting President
MM. C.L. ROZAKIS
F. ERMACORA
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 10 December 1993 by Georgios ANOMERITIS against Greece and registered on 4 January 1994 under file No. 23169/94;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Greek citizen born in 1935, residing in Athens and a Member of Parliament. Before the Commission he is represented by Messrs. P. Bitsaxis and I. Stamoulis, attorneys-at-law practising in Athens.

The facts of the case as they have been submitted by the applicant may be summarised as follows.

In 1987 the applicant was appointed by a socialist government Governor of the National Real Estate Bank of Greece (Ethniki Ktimatiki Trapeza tis Ellados - hereafter "the Bank"). On 11 January 1988 the Board of Directors of the Bank, under the chairmanship of the applicant, approved the terms of settlement of a loan which the Bank had granted to the "Akti Plepi" hotel company.

On 18 May 1989, some days before the elections of June 1989 in which the applicant was a candidate, two Members of Parliament of the opposition party lodged a criminal complaint with the Public Prosecutor of the First Instance Criminal Court of Athens against the members of the Board of Directors of the Bank, claiming that, by agreeing to the above-mentioned settlement, the latter had acted against the interests of the Bank.

In November 1989, some days before a new parliamentary election in which the applicant was again a candidate, a magistrate (ptaismatodikis) examined witnesses in the context of a preliminary

enquiry into the "Akti Plepi" affair.

Further examinations were carried out by the Public Prosecutor of the First Instance Criminal Court of Athens just before the parliamentary elections of 8 April 1990. Having decided to institute criminal proceedings against the applicant and the other members of the Board of Directors of the Bank, the Public Prosecutor sent the case-file to the Special Investigating Judge of Athens. The latter summoned the applicant to present himself before him on 24 April 1990. Having failed to serve the summons on the applicant personally, the court bailiff pinned them on the door of the applicant's office in Athens. The applicant, who was campaigning in his electoral district at the time, claims not to have found the summons when he returned to Athens after the elections.

Having been informed about the institution of the criminal proceedings by other members of the Board of Directors of the Bank, the applicant's lawyer visited the investigating judge on 17 April 1990 to find out that his client had been charged with an aggravated form of malpractice and that he would be notified of the contents of the case-file when he appeared for examination on 24 April 1990. According to the applicant, the prosecutor told his lawyer that the examination of the applicant would be postponed to enable him to prepare his defence.

When the applicant appeared in the morning of 24 April 1990 before the investigating judge, the latter ordered his arrest "in order to be brought before the investigating judge for examination". The applicant applied for the arrest warrant to be revoked, inviting the investigating judge to introduce this request before the Indictments Chamber of the First Instance Criminal Court (Dikastiko Symvoulio Plimmeleiodikon) of Athens. The investigating judge rejected his request.

On 25 April 1990 the applicant was notified of the contents of the case-file. On 26 April 1990 he appeared again before the investigating judge. Having examined the applicant, the investigating judge issued an order remanding him in custody.

The applicant challenged the investigating judge's order before the Indictments Chamber of the First Instance Criminal Court of Athens, asking for leave to be heard in person.

The applicant's challenge was heard on 11 May 1990. The Chamber considered that it could not hear the applicant in person under national law. It further considered that the investigating judge's failure to introduce the applicant's application for the revocation of the arrest warrant before the Chamber did not vitiate the judge's subsequent order remanding the applicant in custody. Under the Code of Criminal Procedure, the investigating judge was empowered to examine the applicant's request himself. The Chamber considered, however, that, despite the existence of serious indications of guilt, the applicant could be released on bail, which the Chamber fixed at GDR 10.000.000. The Chamber finally ordered the applicant not to leave the country.

On 5 November 1990 the Indictments Chamber of the Appeal Court (Symvoulio Efeton) of Athens decided to commit the applicant for trial before the three-member Court of Appeal of Athens, which it considered competent to hear the case at first instance because of the nature of the offence at issue, an aggravated form of malpractice. Although the applicant had applied to be heard in person, the chamber did not consider this necessary.

On 23 December 1991 the Court of Appeal acquitted, by majority, the applicant and ordered the return of the GDR 10.000.000 which had been paid to obtain the applicant's provisional release. The court decided, however, not to grant the applicant compensation for the

period he spent in detention on remand, since the investigating judge had acted lawfully when ordering the applicant's arrest and detention on remand and "it could not be said that there did not exist at the time of his arrest any serious indication of guilt".

On 2 January 1992 the Head of the Public Prosecutor's Office by the Athens Court of Appeal appealed against this decision. On 10 June 1993 the five-member Court of Appeal of Athens confirmed the first instance decision, considering unanimously that there existed doubts as to the applicant's guilt.

Immediately after the pronouncement of the decision of the court on the merits, the Public Prosecutor proposed that the applicant should not be granted compensation for the period he had spent in detention on remand. The applicant's counsel submitted that the court should not address the issue on that day, as the defence would consider whether to apply formally for compensation within the three day period following the judgment, as prescribed by national law. The court nevertheless decided that the applicant should not be granted compensation, since the investigating judge had acted lawfully when ordering the applicant's arrest and detention on remand and there existed at the time of his arrest serious indications of guilt.

The text of the decision of the five-member Court of Appeal was finalised (katharographi) on 1 October 1993. The Public Prosecutor's Office did not appeal in cassation within the thirty day period prescribed by national law.

COMPLAINTS

1. The applicant complains of a violation of Article 5 para. 1 (c) in that he was unnecessarily placed under arrest on 24 April 1990, as he had appeared on his own free will before the investigating judge. He further submits that, contrary to the requirements of the above-mentioned provision of the Convention, there could have been no reasonable suspicion against him, as the order of arrest did not refer to a such a suspicion. He also argues that national law was breached as well since the order of arrest did not contain any reasons, nor was it mentioned that it had been issued to prevent the applicant from committing new offences or fleeing.

The applicant finally complains that the investigating judge breached national law and the Convention when he ordered the applicant's detention on remand on 26 April 1990, without referring to any indications which would have justified the judge's conclusion that there was a reasonable suspicion that the applicant had committed a criminal offence, or that he was dangerous, or that there was a reasonable suspicion that he would flee.

2. The applicant complains of a violation of Article 5 para. 5 of the Convention in that he was not awarded compensation, despite the fact that he had been illegally detained on remand.

3. By letter of 25 April 1994 the applicant raised the following additional complaints:

a) He was not informed of the nature of the charges against him when arrested on 24 April 1990. The investigating judge did not communicate to him the contents of the file nor did he refer to any circumstances which would justify a reasonable suspicion that he had committed a criminal offence, or his conclusion that the applicant could flee or commit a new criminal offence. He invokes in this connection Article 5 para. 2 of the Convention.

b) He could not challenge under national law the lawfulness of the original order of arrest. He invokes in this connection Articles 5 para. 4 and 13 of the Convention.

c) He was unlawfully ordered to pay a sum of money as bail, in breach of Article 1 of Protocol No. 1.

d) He was unlawfully ordered not to leave the country, in violation of Article 2 of Protocol No. 4.

e) The second instance court decided not to award him compensation in respect of the period he spent in detention on remand without hearing him. There was no possibility to appeal against this decision under national law. He invokes in this connection Articles 6 para. 1 and 13 of the Convention.

f) The investigating judge did not respect in his case the presumption of innocence guaranteed under Article 6 para. 2 of the Convention, as he ordered his arrest without hearing him or informing him of the nature of the charges against him. He was given 48 hours within which to prepare his initial statement before the investigating judge, a period of time which was clearly inadequate under Article 6 para. 3 (b) of the Convention, given the complicated nature of the charges against him.

g) He was persecuted and subjected to inhuman and degrading treatment on political grounds, in breach of Articles 3 and 14 of the Convention.

THE LAW

1. The applicant complains that his arrest and detention on remand were not justified under Article 5 para. 1 (c) (Art. 5-1-c) of the Convention.

Article 5 para. 1 (Art. 5-1) of the Convention provides the following:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> .....
>
> c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so ...."

The Commission notes that the applicant first complains that the investigating judge did not respect national law when ordering his arrest and detention on remand in that he failed to provide adequate reasons as required by Articles 276 and 282 of the Code of Criminal Procedure.

The Commission recalls that the first condition laid down in Article 5 para. 1 (c) (Art. 5-1-c) of the Convention is that the detention must be ordered "in accordance with a procedure prescribed by law" and that it must be "lawful" within the meaning of this provision. In accordance with the case-law of the Court, the provision refers back essentially to domestic law and lays down the obligation to conform to the substantive and procedural rules thereof (Eur. Court H.R., Wassink judgment of 27 September 1990, Series A no. 185, p. 11, para. 23). Moreover, under Article 60 (Art. 60) of the Convention, nothing in the Convention shall be construed as limiting or derogating from any human rights and fundamental freedoms which may be ensured under the laws of the Contracting Party concerned.

The Commission also recalls, however, that it is for the national authorities in the first place, and especially the courts, to interpret and apply domestic law and to settle any disputes arising therefrom (Eur. Court H.R., Kemmache judgment of 24 November 1994, Series A no. 296-C, para. 37). Insofar as the present case is concerned, the Commission notes that the applicant was initially arrested on the basis of a warrant issued by the investigating judge, who remanded him in custody two days later. Both the first and second instance courts, when pronouncing on the applicant's entitlement to compensation, considered that the judge had acted in full compliance with domestic law. The Commission does not consider that there emerge from the case-file any elements which cast doubt on this conclusion. As a result, it considers that the deprivation of the applicant's liberty was "lawful" and ordered "in accordance with a procedure prescribed by law".

Insofar as the applicant complains that he was arrested, although there could not have been any reasonable suspicion against him, the Commission notes that the applicant bases himself on the fact that neither the arrest warrant nor the order remanding him in custody mention any elements which would have justified such a conclusion.

In accordance, however, with the Commission's case-law, the Convention does not stipulate that the reasons for a person's arrest should be stated in the text of the decision authorising detention. Article 5 para. 2 (Art. 5-2) does not even require the reasons to be given in writing to the detained person (No. 8098/77, Dec. 13.12.78, D.R. 16 p. 111). Moreover, the reasonable suspicion in Article 5 para. 1 (c) (Art. 5-1-c) of the Convention does not mean that the suspected person's guilt must at that stage be established and proven, and it cannot be a condition for arrest and detention pending trial that the commission of the offence with which the person concerned is charged has been established. It is precisely the purpose of the official investigation and detention the reality and nature of the offences laid against the accused should be definitely proved (Eur. Court H.R., Murray judgment of 28 October 1994, Series A no. 300-B, para. 55; No. 8224/78, Dec. 5.12.78, D.R. 15 p. 211; No. 10803/84, Dec. 16.12.87, D.R. 54 p. 35).

In the present case, before deciding to institute criminal proceedings, the Public Prosecutor conducted a preliminary inquiry in the context of which several witnesses had been examined and other evidential material produced. The case-file, which the public prosecutor transmitted to the investigating judge, was so voluminous that the applicant complained that 48 hours could not suffice for the preparation of his initial statement before the investigating judge. Faced with what appears to be a thorough preliminary inquiry and in the absence of any indications to the contrary, the Commission is satisfied that the investigating judge could reasonably conclude that there existed a reasonable suspicion that the applicant had committed a criminal offence.

The Commission finally notes that the applicant complains that his arrest was abusive, since he was deprived of his liberty on the basis of an arrest warrant which was purportedly issued to ensure his appearance before the investigating judge, notwithstanding his clearly manifested intention to submit himself to the proceedings instituted against him.

The Commission recalls that the applicant was facing serious charges, rendering him liable to life imprisonment. When remanding him in custody, two days after his arrest, the investigating judge considered that he was dangerous and that there was a reasonable suspicion that he would flee. Moreover, the applicant was not provisionally released until he paid a substantial amount of money as bail.

In the light of all the above and its case-law to the effect that

the reasons for the suspect's arrest need not be mentioned in the text of the decision which authorises it, the Commission considers that the investigating judge acted reasonably when he originally ordered the applicant's arrest.

As a result, the above complaints do not disclose any appearance of a violation of the rights and freedoms set out in Article 5 para. 1 (c) (Art. 5-1-c) of the Convention. The Commission concludes that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains of a violation of Article 5 para. 5 (Art. 5-5) of the Convention in that he was not awarded compensation despite the fact that he had been unlawfully detained on remand.

Article 5 para. 5 (Art. 5-5) of the Convention provides the following:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The Commission recalls that, in accordance with its constant case-law, complaints based on Article 5 para. 5 (Art. 5-5) of the Convention may be examined directly by the Commission only if the domestic authorities have found a violation of any of the provisions of paragraphs 1 to 4 of this Article. In the absence of such a finding, the Commission itself must first establish the existence of such a violation (No. 7950/77, Dec. 4.3.80, D.R. 19 p. 213). In the present case, however, no such violation has been established by either the domestic authorities or the Commission. In the absence of such a finding, no issue arises under Article 5 para. 5 (Art. 5-5) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The Commission notes that by letter of 25 April 1994 the applicant raised a number of complaints which he had not included in his original application form. The applicant submits that these complaints have been introduced within the six month time-limit provided for under Article 26 (Art. 26) of the Convention, since the last domestic court decision issued in his case became final on 1 November 1993, when the time limit for the lodging of an appeal in cassation by the public prosecutor expired.

The Commission does not consider it necessary to pronounce on the issue whether the applicant has complied with the requirements of Article 26 (Art. 26) of the Convention, as the complaints introduced on 25 April 1994 are in any event manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention for the reasons mentioned below.

a) Insofar as the applicant complains that he was not informed of the nature of the charges against him when he was arrested, the Commission recalls that Article 5 para. 2 (Art. 5-2) of the Convention provides that everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

The Commission notes that the applicant complains in essence of the alleged failure of the investigating judge to communicate to him before ordering his arrest the contents of the file and to substantiate his conclusion that there was a reasonable suspicion that the applicant had committed a criminal offence and that he could flee or commit a new criminal offence.

In accordance, however, with the constant case-law of the Commission and the Court, although Article 5 para. 2 (Art. 5-2) requires that sufficient information must be provided to the accused to facilitate the pursuit of the remedy envisaged by Article 5 para. 4 (Art. 5-4) of the Convention, it does not require that a complete description of all the charges should be given to the accused at the moment of his arrest. Neither does it require the disclosure of the complete case-file (Eur. Court H.R., Fox, Campbell and Hartley judgment of 30 August 1990, Series A no. 182, p. 19, para. 40; No. 8098/77, Dec. 13.12.78, D.R. 16 p. 111; No. 9614/81, Dec. 12.10.83, D.R. 34 p. 119).

The Commission notes that the applicant does not dispute that he was told immediately in general terms why he was apprehended. Neither does he dispute that the entire case-file was disclosed to him on the following day, ie one day before making his initial statement before the investigating judge. The applicant finally accepts that in the remand in custody order which was issued after his initial examination, the investigating judge referred to the grounds which rendered, in his view, the applicant's detention necessary.

In these circumstances, the Commission considers that the applicant was promptly and sufficiently informed of the reasons for his arrest and of the charges against him in accordance with Article 5 para. 2 (Art. 5-2) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

b) Insofar as the applicant complains that he could not challenge the lawfulness of the original order of arrest on the basis of which he had been detained for two days before being remanded in custody after his examination by the investigation judge, the Commission recalls that Article 5 para. 4 (Art. 5-4) of the Convention provides that everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

The Commission recalls that the applicant was detained on the basis of an arrest warrant for two days and on the basis of a remand in custody order thereafter. The applicant could and did apply to the investigating judge for provisional release during the two day period at issue. Thereafter he acquired the right to seize the Indictments Chamber with the question of the lawfulness of his detention further to the remand in custody order.

The Commission considers that, in these circumstances, no appearance of a violation of Article 5 para. 4 (Art. 5-4) of the Convention is disclosed (cf. Eur. Court H.R., Fox, Campbell and Hartley judgment of 30 August 1990, Series A no. 182, p. 20, para. 45; No. 11256/84, Dec. 5.9.88, D.R. 57 p. 47). It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

c) Insofar as the applicant complains under Article 1 of Protocol No. 1 (P1-1) that he had been ordered to pay a sum of money as bail, the Commission recalls that the applicant was placed in detention on remand on the basis of a reasonable suspicion of having committed a criminal offence.

It further recalls that Article 5 para. 3 (Art. 5-3) of the Convention expressly authorises the release on bail of persons detained on remand and that Article 1 para. 2 of Protocol No. 1 (P1-1-2) authorises the control of the use of property in accordance with the general interest.

Recalling that the amount of money, which was paid as bail in this case, was returned to the applicant after his acquittal, the Commission considers that the applicant's complaint is manifestly ill-founded and must be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

d) Insofar as the applicant complains of a violation of Article 2 of Protocol No. 4 (P4-2), which provides that everyone shall be free to leave any country, including his own, the Commission recalls that Greece has not ratified this Protocol. As a result, this part of the application must be rejected as incompatible with the provisions of the Convention.

e) Insofar as the applicant complains that the second instance court refused to grant him compensation for the period he spent in detention on remand and invokes Article 6 para. 1 (Art. 6-1) of the Convention, the Commission recalls that this provision guarantees the right to be heard by the court which will determine one's civil rights.

The Commission notes that in the present case the domestic court decided to exercise its power to address the issue proprio motu immediately after the pronouncement of its decision acquitting the applicant. The applicant was invited to submit his observations thereon, which he chose not to. In these circumstances the Commission does not consider that, assuming that Article 6 (Art. 6) applies, the applicant was deprived of his right to be heard.

His complaint is therefore manifestly ill-founded and must be rejected, pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

f) Insofar as the applicant complains of a violation of Article 6 para. 2 and 3 (b) (Art. 6-2, 6-3-b) of the Convention, the Commission notes that at the end of the proceedings the applicant was acquitted of the offences with which he had been charged.

The outcome of the trial has been favourable for the applicant and any defects the proceedings might have had must be considered to be remedied. It follows that the applicant can no longer claim to be a victim, within the meaning of Article 25 (Art. 25), of a violation of Article 6 of the Convention (cf. No. 8083/77, Dec. 13.3.80, D.R. 19 p. 223 and No. 15831/89, Dec. 25.2.91, D.R. 69 p. 317). His complaint is, therefore, manifestly ill-founded and must be rejected, pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

g) The applicant finally complains of a violation of Articles 3 and 14 (Art. 3, 14) of the Convention.

However, insofar as the matters complained of have been substantiated and are within its competence, the Commission finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

This part of the application must be, therefore, rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the First Chamber	Acting President of the First Chamber
(M.F. BUQUICCHIO)	(J. LIDDY)