CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 25771/03
by Mhn Ghassan ALSAYED ALLAHAM
against Greece

The European Court of Human Rights (First Section), sitting on 20 October 2005 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 regard to the above application lodged on 8 August 2003,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Mhn Ghassan Alsayed Allaham, is a Syrian national, who was born in 1962 and lives in Athens. He is represented before the Court by Mr E. Papadakis, a lawyer practising in Athens. The respondent Government are represented by the delegates of their Agent, Mr V. Kyriazopoulos, Adviser at the State Legal Council and Mrs S. Trekli, Legal Assistant at the State Legal Council.

The facts of the case, as submitted by the parties, may be summarised as follows.

A. Outline of the events

Since 1986 the applicant lives and works in Greece. He is married to a Greek woman and possesses a valid stay and work permit.

On 8 September 1998, at approximately 07.00 p.m., the applicant and two other Syrian nationals accompanied a friend to the Ano Patissia police station in order to report a robbery. Having waited for a long time to be attended to, the applicant started complaining. He alleges that he was then brutally beaten on his head by a police officer, Mr Georgantzis. Other police officers to whom he turned for help insulted him and locked him in an empty office for three hours. The applicant alleges that the behaviour of the police officers changed when they realised that he was legally settled in Greece. Then the applicant was allowed to leave the police station. He went immediately to the regional hospital in order to be examined by a doctor. It was found that he had "signs of an ecchymosis on the left zygomatic area" and "signs of blood on the left side of the auditory duct, which came from the injury to the area around the eardrum membrane". The doctor who examined the applicant concluded that "the extent of the damage will be determined upon completion of the remaining otoscopy tests, as the present condition does not appear to be severe." Following the incident the applicant suffered from headaches and dizziness. On 16 September 1998 he was diagnosed as suffering from "perforation of the left ear (eardrum)".

B. Disciplinary measures against Mr Georgantzis

On 14 September 1998 the applicant reported the incident to the Minister of Public Order.

On 16 August 2000 the Chief of the Greek Police fined Mr Georgantzis 100,000 drachmas (approximately 293 euros). On 27 October 2000 the latter appealed against that decision but his appeal was dismissed by the Athens

Administrative Court of Appeal on 30 November 2001 (decision no. 2602/2001).

C. Criminal proceedings against Mr Georgantzis

On 9 September 1998 the applicant filed a criminal complaint against three police officers who were involved in the incident. On an unspecified date criminal proceedings were instituted against Mr Georgantzis for causing serious bodily harm. The applicant joined the proceedings as a civil party claiming a specific amount by way of damages. He produced before the court the medical reports which had recorded his injuries. Several witnesses were heard.

On 19 February 2002 the three-member Athens Court of Appeal found Mr Georgantzis guilty of serious bodily harm and sentenced him to four months' imprisonment (decision no. 2048/2002). Mr Georgantzis appealed.

On 18 December 2002 the five-member Athens Court of Appeal, by a majority, acquitted Mr Georgantzis. The court found that it had not been established that the accused had beaten the applicant. It stressed that it had reached that conclusion having taken into account the statements of the witnesses for the defence and that the medical reports produced by the applicant were not "safe criteria for the defendant's guilt, mainly because they are directly contrary to the testimonies of the above witnesses who testify with their own knowledge and perception that the defendant did not hit [the applicant]; therefore the injuries referred to [in the medical reports] could have been caused by another reason, taken also into account that the deafness complained of [by the applicant] existed before the incident, as stated by [two] witnesses". However, two judges had the opinion that in view of all the evidence produced before the court the accused should have been declared guilty (decision no. 1861/2002).

On 19 February 2003 the applicant, who did not have the right to appeal in cassation under domestic law, asked the Public Prosecutor to bring the case before the Court of cassation. On 24 February 2003 the latter dismissed his request.

D. Civil proceedings against Mr Georgantzis

On 4 September 2003 the applicant brought an action for damages against Mr Georgantzis in the Athens Administrative Court of First Instance.

On 30 June 2004 the court rejected his action (decision no. 7820/2004).

On 29 September 2004 the applicant appealed to the Athens Administrative Court of Appeal. The proceedings are still pending.

COMPLAINTS

The applicant complained under Articles 3, 6 and 14 of the Convention that although he was ill-treated by police officer Georgantzis, the latter was subsequently acquitted by the domestic court.

THE LAW

A. As to the Government's objection

The Government first argued that the application was lodged belatedly. They submitted that the domestic proceedings came to an end on 18 December 2002, when the Athens Court of Appeal acquitted Mr Georgantzis, which is more than six months prior to the introduction of the application. They stressed that since the applicant did not have the right to appeal in cassation under domestic law, the Public Prosecutor's refusal to bring the case before the Court of cassation cannot be regarded as a "final decision", within the meaning of Article 35 § 1 of the Convention.

The applicant submitted that his application was inside the six-month time-limit.

According to Article 35 § 1 of the Convention, the Court "may only deal with [a] matter ... within a period of six months from the date on which the final decision was taken". Article 35 § 1 refers to "the final decision" taken in the process of exhausting domestic remedies which are "effective and sufficient" for the purpose of redressing the applicant's complaint (see *Camberrow MM5 AD v. Bulgaria* (dec.), no. 50357/99, 1 April 2004).

Following its practice so far, the Court accepts that, although the applicant did not have the right to appeal in cassation against the appeal decision, his attempt to bring the case before the Court of Cassation through the Public Prosecutor was a remedy which could have led to the invalidation of the impugned decision (see *Alija v. Greece* (dec.), no. 73717/01, 2 October 2003; *Alija v. Greece*, no. 73717/01, § 15, 7 April 2005). It follows that in the present case the six months' period runs from 24 February 2003, when the Public Prosecutor dismissed the applicant's request to bring the case before the Court of Cassation. As the application was lodged less than six months after that date, on 8 August 2003, the Government's objection must accordingly be dismissed.

B. As to the applicant's complaints

The applicant alleged a violation of Article 3 of the Convention in that he was subjected to acts of police brutality which inflicted on him great physical and mental suffering amounting to torture, inhuman and/or degrading treatment or punishment. The applicant further complained, under Articles 6 and 14 of the Convention, about the acquittal of the police officer who had allegedly beaten him. He asserted that the fact that a foreigner was accusing a police officer was a decisive factor in the attitude of the court of appeal, which eventually ignored all the medical reports and the other evidence produced before it and acquitted the accused on the sole basis of the statements of the witnesses for the defence. This complaint was considered by the Court under the procedural aspect of Article 3, taken together with Articles 13 and 14 of the Convention.

Article 3 of the Convention provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 13 of the Convention stipulates:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 14 of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

a. As regards the applicant's allegations that his was ill-treated and that the authorities failed to redress his grievances, the Government emphasised that it was not normally within the province of the Court to substitute its own assessment of the facts for that of the domestic courts. They submitted that in the present case the Athens Court of Appeal had disagreed with the applicant's account of how his injuries came about and that no material in the file could call into question the findings of the national court and add weight to the applicant's allegations. The Government further stressed that the State's duty to conduct an effective official investigation was not an obligation of result, but of means. They submitted that following the event, an administrative investigation was opened and a criminal prosecution was brought against the police officer who was involved in the incident.

The applicant submitted that his serious injuries were the result of the unnecessary and disproportionate use of force by the police. He claimed that the domestic courts had failed to secure his rights.

The Court considers, in the light of the parties' submissions, that the complaints raise serious issues of fact and law under the Convention, the

determination of which requires an examination of the merits. The Court concludes therefore that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

b. As regards the applicant's allegations that there was a racial element in the incident at issue, the Government emphasised that the Court had always required "proof beyond reasonable doubt" and submitted that the applicant's allegations were not supported by any appropriate evidence.

The applicant argued that he was a victim of racial discrimination.

According to the Court's case-law, the standard of proof required under the Convention is "proof beyond reasonable doubt" that the acts complained of were motivated by racial prejudice (see *Velikova v. Bulgaria*, no. 41488/98, § 94, ECHR 2000–VI). The Court has accepted that proof may follow from the coexistence of sufficiently strong, clear and concordant inferences (*Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, 6 July 2005).

In the present case, having assessed all relevant elements, the Court does not consider that it has been established that racist attitudes played a role in the incident. The applicant has not referred to any particular fact from which inferences of a racist act may be drawn.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints under Articles 3 and 13 of the Convention;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President