AS TO THE ADMISSIBILITY OF

Application No. 23898/94
by Konstantinos CHAROUNTAKIS
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 12 April 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

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 6 April 1994 by Konstantinos CHAROUNTAKIS against Germany and registered on 15 April 1994 under file No. 23898/94;

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 1960. When lodging the present application he was detained in prison in Oldenburg, pending extradition to Greece. The applicant is represented by Mr. Jens Meggers, a lawyer practising in Osnabrück.

It follows from his statements and the documents submitted that, before his arrest on 15 April 1991, the applicant was living with his Dutch wife and their two children in the Netherlands. In February 1993 he was convicted in Germany of aiding and abetting in the illegal importation of drugs and of drug trafficking committed in 1990. He was sentenced to two years' imprisonment. The execution of the sentence was stayed on probation. The judgment became final on 23 February 1993. Since 15 February 1993, the applicant was detained on the authority of a provisional warrant of arrest for the purpose of his extradition (vorläufiger Auslieferungshaftbefehl) issued on 5 February 1993 by the Oldenburg Court of Appeal (Oberlandesgericht).

On 22 March 1993 the Greek Republic requested the applicant's extradition on the ground that he was suspected of having acquired 3 kg of cocaine together with an accomplice in Brazil in June 1990 with the purpose of selling the drugs in Greece. He then had the cocaine

transported by messengers via Madrid to Athens. In addition, during the preceding two years he had at least six times transported unknown quantities of cocaine to Greece. He had thereby violated Articles 5 and 8 of the Greek Anti-Drug Act.

Article 5 of the Greek Anti-Drug Act provides for a prison sentence of at least ten years and fines up to 100 million Drachmas for

- the import and export of drugs
- drug trafficking
- possession and transportation of drugs

Article 8 provides for life imprisonment in aggravated cases of violations of Article 5, in particular professional drug trafficking.

On 26 March 1993 the Oldenburg Court of Appeal issued a definite detention order and on 27 August 1993 it authorized the applicant's extradition and ordered that his detention pending extradition should continue.

Prior to that decision the Federal Court (Bundesgerichtshof) had refused to deal with a request of the Court of Appeal to state an opinion as to whether or not it considered the extradition admissible in the light of the fact that the punishment provided for under Greek law for the offence in question was far more severe than under German law.

The applicant then lodged a constitutional complaint which was rejected by a panel of three judges of the Federal Constitutional Court (Bundesverfassungsgericht) on 4 March 1994 in accordance with Sections 93 (b) read in conjunction with 93 (a) of the Act on the Federal Constitutional Court (BVerfG).

It is stated in the decision that the Federal Ministry for Justice had submitted observations on behalf of the Federal Government as well as the Ministry of Justice of the Lower Saxony District. Those ministries had stated the opinion that the applicant's extradition was unobjectionable.

In so far as the applicant complained of the Appellate Court's order of 27 August 1993, the panel of judges of the Federal Constitutional Court considered that an extradition could not be admitted if the request for the extradition was based on measures which were incompatible with Germany's constitutional order, in particular the rule of law. Such incompatibility was not given by the mere fact that a criminal punishment which the person concerned had to expect in the requesting State was extremely severe (zu hart) compared to the standards of German law. Extradition should not take place only where the expected punishment was of intolerable severity and under all circumstances unreasonable or as such cruel, inhuman or degrading.

These principles had not been violated by the Appellate Court's order authorizing the applicant's extradition to Greece despite the fact that he risked a lifelong prison sentence.

Such a prison sentence was not unreasonable in view of the serious charges laid against the applicant. Consumers of cocaine expose themselves to severe psychic and physical deteriorations including the danger of death in consequence of circulatory collapse or paralysis of the respiratory organs. He who imports such dangerous drugs for profit purposes and thereby exposes a great number of persons to such dangers acts in a particularly reprehensible manner and such acts normally justify severe punishment.

Also under German law drug trafficking was considered to be a serious offence for which the law provides a minimum penalty of two years' imprisonment and a maximum of fifteen years.

The Greek legislator by providing for maximum punishment in the form of life imprisonment for aggravated cases of drug trafficking was obviously motivated by the idea of providing for an exemplary punishment with a deterrent effect. The legal orders of numerous states provided for such exemplary punishments; in some states even the death penalty still existed for aggravated cases of drug trafficking.

Furthermore, the panel of three judges noted that even a sentence of life imprisonment would not deprive the applicant of a concrete and real possibility of regaining his freedom. Articles 105, 106 and 110 of the Greek Penal Code provided that life prisoners could be released after having served twenty years if their conduct was unobjectionable and there was a positive prognosis as to their future behaviour. Whether these requirements were given was examined in judicial proceedings on the basis of specific legislative regulations (gesetzlich geregeltes, gerechtliches Verfahren) and there was nothing to show that the domestic court would have limited discretionary power in this matter as the applicant had alleged.

In view of this concrete possibility of an earlier release (vorzeitige Entlassung) the expectation of a lifelong prison sentence was not disproportionate to the severe offence in question so as to amount to cruel, inhuman or degrading treatment.

Also the right to respect for family life did not protect a foreigner from being brought before the courts of his home country if he had violated penal norms.

The latest order continuing the applicant's detention pending extradition was given by the Oldenburg Court of Appeal on 24 March 1994.

According to information given by applicant's counsel on 23 February 1996 the applicant was extradited on 1 June 1994 from Germany to Greece.

COMPLAINTS

The applicant submits that his extradition to Greece with the consequence of being exposed to the danger of being convicted to life imprisonment will certainly disrupt the ties between himself and his wife and children who live in the Netherlands. The consequence will practically be that his family life will be destroyed. His family cannot be expected to follow him to Greece as his wife and children are Dutch citizens who would not have any means of existence if they moved to Greece. The applicant further points out that he himself lived for many years in the Netherlands where he disposes of a residence permit and never conflicted with Netherlands law. The Netherlands would deny his extradition for humanitarian reasons. The applicant therefore considers that the authorization given by a German court for his extradition to Greece violates Articles 3, 5 para. 1 and Article 8 para. 1 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The applicant's request for an interim measure in accordance with Rule 36 of the Commission's Rules of Procedure was rejected by the Commission's President on 15 April 1994.

THE LAW

The applicant has complained that his extradition to Greece would be in breach of the Convention as he is risking an irrevocable life prison sentence and as a consequence the relationship with his wife and children who are living in the Netherlands will practically be destroyed.

1. He has mainly invoked Article 3 (Art. 3) of the Convention which so far as relevant forbids inhuman or degrading treatment.

It is true that a person against whom an extradition procedure is pending can claim to be a victim of an alleged violation of Article 3 (Art. 3) of the Convention where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country (Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, p. 35 para 91).

However, life imprisonment for serious crimes is not as such contrary to Article 3 (Art. 3). The Commission has held in a previous case that no right can be derived from that provision for an individual having served part of a lawful life sentence to have that sentence reconsidered by a national authority with a view to its remission or termination (cf. see No. 15776/89, Dec. 5.12.89, D.R. 64, p. 264 and No. 7994/77, Dec. 6.5.78, D.R. 14, p. 238; see also No. 11653/85, Dec. 3.3.86, D.R. 46, p. 231). Having regard to the findings of the Federal Constitutional Court in the present matter the Commission notes that in any event the applicant, if convicted and sentenced to life imprisonment, will have the possibility under Greek law of applying for conditional release after having served twenty years of imprisonment.

The Commission concludes that the circumstances of the present application do not disclose any appearance of a violation of Article 3 (Art. 3) of the Convention.

2. The applicant has next invoked Articles 5 and 8 (Art. 5, 8) of the Convention.

Article 5 (Art. 5) protects against arbitrary deprivation of liberty. However, the applicant's detention in Germany is justified under Article 5 para. 1 (f) (Art. 5-1-f) as extradition proceedings were taken against him and there is nothing to show that they were not actively pursued with due diligence throughout the relevant period.

As regards the right to protection of the applicant's family life (Article 8 (Art. 8) of the Convention) it appears from the domestic decisions not contested by the applicant that his extradition, which can be considered as a measure interfering with his family life, is based on German law and serves the purpose of prevention of disorder or crime.

It remains to be examined whether the measure is necessary in a democratic society. In this respect the Contracting States have a margin of appreciation. However, "necessity" implies that the interference must correspond to a pressing social need and, in particular, that it must be proportionate to the legitimate aim pursued (cf. Eur. Court H.R., Berrehab judgment of 21 June 1988, Series A no. 138, p. 15, para. 26).

The Commission notes that the applicant was wanted by the Greek judicial authorities as being suspected as a drug dealer who had large quantities of cocaine transported to Greece by messengers. This is, as the German Constitutional Court also noted, a very serious crime and the applicant, by getting involved in the drug trafficking if such is shown to be the case, deliberately took the risk of severe punishment if he was caught. The Commission shares the Federal Constitutional Court's opinion that the right to respect for family life does not in such circumstances protect a foreigner from being brought before the courts of his home country if he is alleged to have violated penal norms.

Respect for the applicant's family life consequently does not

outweigh the interests of the public, be it Greek or German, in having a suspected offender brought to trial and having the sentence provided for under domestic law imposed. It follows that the interference complained of is justified under Article 8 para. 2 (Art. 8-2) of the Convention.

There is consequently again no appearance of the provisions invoked by the applicant and the application therefore has to be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention as being manifestly ill-founded.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)