AS TO THE ADMISSIBILITY OF

Application No. 22051/93
by K.T.
against Greece

The European Commission of Human Rights (First Chamber) sitting in private on 29 November 1995, the following members being present:

Mrs. J. LIDDY, Acting President
MM. C.L. ROZAKIS
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 20 March 1993 by K.T. against Greece and registered on 11 June 1993 under file No. 22051/93;

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 Swedish citizen, born in 1964 and resident in Stockholm.

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

The applicant arrived in Athens, Greece on 29 June 1990 together with his girlfriend, A. On 30 June 1990 A allegedly gave birth to a dead baby in a hotel room. She had allegedly repressed her pregnancy and, in a state of shock, placed the baby in her backpack without informing the applicant or any of their Swedish friends N and L of the incident. On the same day they all left Athens for Tolon, where A left the baby in a plastic bag in a hotel room. The corpse of the baby was later discovered in a pile of garbage near the hotel, where it had been placed by a cleaning lady.

On 4 July 1990 the applicant and A left Tolon for the Greek islands, while N and L remained in Tolon. On 5 July 1990 N and L were apprehended and interrogated by the police as to the circumstances surrounding the finding of the baby corpse. Allegedly, leading questions were put to them during the interrogation which was held in Greek. The interpretation into English was allegedly defective. N and

L were to return to Sweden on 6 July 1990. Though not understanding it fully, N therefore signed an account in Greek of their testimony. He later claimed that the record of his written testimony had been incomplete and incorrect.

According to the report from the autopsy performed on 7 July 1990, the baby had been born alive and had been killed by beatings on its head and strangulation caused by its own umbilical cord. This conclusion was either questioned or refuted by other forensic experts, who considered that the baby might have died before having been born.

On 13 July 1990 the applicant and A were arrested in Athens. On 15 July 1990 they were transferred to Nafplion and interrogated by the police. Further interrogations were conducted by a deputy prosecutor on 16 July 1990 and by the investigating judge on 19 July 1990. The last-mentioned interrogation was also attended by an interpreter provided by the Swedish Embassy in Greece as well as by the applicant's and A's counsel. The judge then formally notified the applicant and A that they were suspected of murder.

On 20 July 1990 the applicant and A were placed in detention on remand pending a decision on, and the payment of, possible bail. On 19 November 1990 the applicants were released on bail, but prohibited from leaving Greece and ordered to report to the police twice a month.

On 21 June 1991 at 09.00 hrs the hearing of the charges began before the First Instance Court (Mikto Orkoto Kakurgodikio) of Korinthos. Its hearing lasted until 02.00 hours on 22 June 1991. The applicant and A gave their statements in Swedish. Only very short breaks were permitted during the hearing and a request for adjournment due to the interpreter's exhaustion was rejected. At the prosecution's request the Court heard three witnesses and three experts. At A's and the applicant's request a Greek psychiatrist was heard as well as their respective fathers, A's former teacher and a Swedish physician.

On 22 June 1991 the First Instance Court convicted A of child murder, the applicant of complicity and sentenced them to four and a half years' and four years' imprisonment, respectively. The applicant and A started serving their sentences immediately.

On 22 January 1992 the Appeal Court (Mikto Orkoto Efetio) of Nafplion held a re-hearing on the applicant's and A's appeal. Its President allegedly interrupted certain witnesses. Four of the prosecution's and one of the defence's witnesses had been unable to attend the hearing but a further witness was heard at the defence's request. Due to a flight delay a Swedish forensic expert whom the defence had requested should be heard arrived only when the Court had started its deliberations and was not heard. The convictions were upheld but at the prosecution's request the sentences were reduced to two years' imprisonment. On 23 January 1992 the applicant and A were deported from Greece.

On 30 March 1992 the applicant and A appealed to the Court of Cassation (Arios Pagos) which by a decision pronounced orally on 4 June 1992 dismissed their appeal.

The written text of the Court of Cassation's decision was signed on 21 September 1992 and later served on the applicant's lawyer and himself.

COMPLAINTS

1. The applicant complains under Article 3 of the Convention that he was subjected to degrading treatment. He refers to the length of his detention on remand, the prohibition preventing him from leaving Greece, his obligation to report to the police and about the length of

his imprisonment. Under the same provision he also complains about the length and conditions during his detention and imprisonment. He submits that no distinction was made between detainees on remand and prisoners. One of the cells in which he was placed did not meet hygienic standards and there were no smoke-free areas on any of the premises. He finally complains that the corpse of his baby was thrown away after the autopsy.

2. The applicant also complains that he was not promptly informed, in a language which he understood, of the reasons for his arrest and of any charge against him. He submits having been notified of the charges only on 19 July 1990. He invokes Article 5 para. 2 of the Convention.

3. Under Article 5 para. 3 of the Convention the applicant furthermore complains about the length of his detention on remand as well as of the length of the proceedings between the detention order and the hearing before the First Instance Court.

4. Under Article 5 para. 5 of the Convention the applicant claims compensation from the Greek State for the alleged violations of his rights under Article 5

5. Under Article 6 paras. 1 and 3 (d) of the Convention the applicant complains that he was denied a fair hearing before an impartial tribunal. He refers to the interrogations conducted by the police and a deputy prosecutor on 15 and 16 July 1990 which were allegedly conducted in violation of Greek law. The police investigations invoked by the prosecution were faulty and misleading. The courts failed to hear N and L and also failed to take into account certain statements by the experts which refuted the autopsy findings. The baby's corpse was disposed of after the autopsy, thus preventing a verification of the autopsy findings. The applicant was wrongly convicted of complicity in the murder of the baby. The courts had regard to the local opinions concerning Scandinavian promiscuity. The court hearings were conducted too speedily, as a result of which the interpreter could not interpret the statements in Greek in their entirety. The Court of Appeal held a summary hearing and refused to hear the forensic expert referred to by the defence, although he had been delayed by a force majeure.

6. The applicant complains under Article 6 para. 2 of the Convention that he was not presumed innocent during his detention on remand, having been placed together with prisoners who had already been convicted of offences.

7. The applicant finally complains also under Article 8 of the Convention that the body of the baby was disposed of after the autopsy, thus preventing it from being properly buried.

THE LAW

1. The applicant complains under Article 3 (Art. 3) of the Convention that he was subjected to degrading treatment. He refers to events up to and including his imprisonment.

The Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 3 (Art. 3) of the Convention, as it follows from Article 26 (Art. 26) that it may only deal with a matter which has been brought to its attention within six months from the decision or incident constituting the subject-matter of the complaint. Where the alleged violation consists of a continuing situation, the six months' time-limit has no application unless and until that situation comes to an end (cf., e.g., No. 11123/84, Dec. 9.12.87, D.R. 54 pp. 52 et seq.).

The Commission notes that the applicant's detention on remand

ended on 19 November 1990, following which he was prohibited until 22 June 1991 from leaving Greece and ordered to report to the police. On 22 June 1991 he was convicted and sentenced to imprisonment. He immediately started serving his sentence and his imprisonment ended in January 1992. The present application was introduced on 20 March 1993, that is more than six months after the expiry of any of the previously mentioned periods. An examination of the complaint does not disclose the existence of any special circumstances which might have interrupted or suspended the running of the six months' period prescribed by Article 26 (Art. 26).

It follows that this complaint has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant also complains that he was not promptly informed, in a language which he understood, of the reasons for his arrest and of any charge against him. He submits having been notified of the charges only on 19 July 1990. He invokes Article 5 para. 2 (Art. 5-2) of the Convention.

Referring to the above-mentioned six months' rule prescribed by Article 26 (Art. 26) of the Convention, the Commission finds that it is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 5 para. 2 (Art. 5-2). It notes that the facts to which this complaint relates allegedly occurred already in July 1990, while the application was introduced only on 20 March 1993, that is more than six months later. Nor does an examination of the complaint disclose the existence of any special circumstances which might have interrupted or suspended the running of the six months' period prescribed by Article 26 (Art. 26).

It follows that this complaint has also been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

3. Under Article 5 para. 3 (Art. 5-3) of the Convention the applicant furthermore complains about the length of his detention on remand.

The Commission has just rejected a complaint lodged under Article 3 (Art. 3) of the Convention but with partly the same substance as the present grievance, considering that the complaint has been lodged belatedly. It follows that this complaint has also been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

4. Under Article 5 para. 5 (Art. 5-5) of the Convention the applicant claims compensation from the Greek State for the alleged violations of his rights under Article 5 (Art. 5).

The Commission recalls that the application of Article 5 para. 5 (Art. 5-5) presupposes the finding of a violation of one of the preceding paragraphs of Article 5 (Art. 5) (see, e.g., No. 10371/82, Dec. 6.3.85, D.R. 42 p. 127; No. 6821/74, Dec. 5.7.76, D.R. 6 pp. 65, 69).

In the present case the Commission has just found itself prevented from examining the applicant's other complaints under Article 5 (Art. 5), since they have been lodged belatedly. In these circumstances Article 5 para. 5 (Art. 5-5) does not apply.

It follows that this complaint is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

5. Under Article 6 paras. 1 and 3 (d) (Art. 6-1, 6-3-d) of the

Convention the applicant complains that, for a number of reasons, he was denied a fair hearing before an impartial tribunal. Article 6 (Art. 6) reads, in so far as relevant, as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
> ...
> d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;..."

The Commission first notes that the decision of the Court of Cassation was pronounced orally in open court on 4 June 1992, that is more than six months before the present application was introduced. The decision was, however, formally served on the applicant only after 21 September 1992, that is less than six months before he introduced his application. In these circumstances the Commission will assume that the six-months' period prescribed by Article 26 (Art. 26) should be calculated from the last-mentioned date and that the complaint has therefore not been lodged belatedly.

As the requirements of Article 6 para. 3 (Art. 6-3) represent particular aspects of the right to a fair trial guaranteed in Article 6 para. 1 (Art. 6-1), the Commission has examined the application from the point of view of these two provisions taken together (e.g., Eur. Court H.R., Lüdi judgment of 15 June 1992, Series A no. 238, p. 20, para. 43). It recalls that it is normally not competent to deal with a complaint alleging that errors of law and fact have been committed by domestic courts. An exception could only be made where the Commission considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention or one of its Protocols, for instance in that a judgment has no legal justification and thereby violates a party's right to receive a fair trial (cf. Eur. Court H.R., De Moor judgment of 23 June 1994, Series A no. 292-A, p. 18, para. 55; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

In the present case the Commission finds no substantiation of the alleged partiality of the First Instance Court. It furthermore observes that the applicant was heard both before the First Instance Court and the Court of Appeal. He was represented by Greek counsel throughout the proceedings. The Commission finds no substantiation of the allegedly insufficient interpretation services at the hearings.

The Commission furthermore recalls that, as a general rule, it is for the domestic courts to assess the evidence before them, in particular since they have the benefit of hearing witnesses and assessing their credibility (e.g., Eur. Court H.R., Klaas judgment of 22 September 1993, Series A no. 269-A, pp. 17-18, paras. 29-30). The Commission's task is to ascertain whether the proceedings, considered as a whole, including the way in which evidence was taken and submitted, were fair (e.g., the above-mentioned Lüdi judgment, loc.cit.). It follows that the Commission cannot examine whether or not the applicant was guilty or innocent of the offence of which he was convicted.

The Commission also recalls that the use of statements obtained at the stage of a police inquiry is not in itself inconsistent with Article 6 (Art. 6) of the Convention, provided that the defendant is given an adequate and proper opportunity to challenge and question a witness against him at least at some stage of the proceedings (cf., e.g., Eur. Court H.R., Saïdi v. France judgment of 20 September 1993,

Series A no. 261-C).

In the present case the Commission cannot find any indication that the defence was deprived of its opportunity to challenge the evidence obtained in the pretrial investigation, notably by calling witnesses such as N and L as well as experts. Finally, the Commission cannot find that the possibility of the defence to argue its case was decisively hampered by the non-hearing of the Swedish forensic expert before the Court of Appeal.

In the above circumstances the Commission concludes that the proceedings against the applicant, seen as a whole, do not disclose any appearance of a violation of Article 6 (Art. 6) of the Convention.

It follows that this complaint must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

6. The applicant complains under Article 6 para. 2 (Art. 6-2) of the Convention that he was not presumed innocent during his detention on remand, having been placed together with prisoners who had already been convicted.

Referring to the above-mentioned six months' rule prescribed by Article 26 (Art. 26) of the Convention, the Commission finds that it is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 6 para. 2 (Art. 6-2). It recalls his detention on remand ended on 19 November 1990, while his application was introduced on 20 March 1993, that is more than six months later. Nor does an examination of this complaint disclose the existence of any special circumstances which might have interrupted or suspended the running of the six months' period.

It follows that this complaint has also been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

7. The applicant complains under Article 8 (Art. 8) of the Convention that the corpse of his baby was disposed of after the autopsy, thus preventing it from being properly buried.

Referring to the above-mentioned six months' rule prescribed by Article 26 (Art. 26) of the Convention, the Commission again finds that is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 8 (Art. 8). It recalls that the autopsy was carried out in July 1990, while the applicant's application was introduced on 20 March 1993, that is more than six months later. Nor does an examination of this complaint disclose the existence of any special circumstances which might have interrupted or suspended the running of the six months' period.

It follows that this complaint has also been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) 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)