AS TO THE ADMISSIBILITY OF

Application No. 23516/94
by Hasan KOSAR
against Greece

The European Commission of Human Rights (First Chamber) sitting in private on 22 February 1995, the following members being present:

Mrs. J. LIDDY, Acting President
MM. C.L. ROZAKIS
A.S. GÖZÜBÜYÜK
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 30 July 1993 by Hasan KOSAR against Greece and registered on 21 February 1994 under file No. 23516/94;

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 Turkish citizen of Kurdish origin, born in 1962. He is a political refugee and resides at the Relief Centre for Refugees (Kentro Perithalpsis Prosfygon) in Lavrion, Greece. Before the Commission he is represented by Mrs. Ioanna Kourtovik, an attorney-at-law practising in Athens.

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

1. The particular circumstances of the case

On 16 January 1992, while visiting a friends' house, the applicant and three other persons were arrested by the police. A search of the appartment was carried out and the police found the seals of an underground organisation and of the Athens airport, jack-knives and forged passports.

On 17 January 1992 the Public Prosecutor of Athens charged the applicant with forgery and terroristic acts. The applicant appointed Mrs. Kourtovik as his lawyer and was given five days to prepare his defence (apologia).

On 22 January 1992, after having heard the applicant, who was assisted by an interpreter and by his lawyer and had already been informed in detail of the accusations against him, the investigating judge of the Athens Court ordered his detention on remand.

On 26 February 1992 the applicant applied to the investigating judge of the Athens Court for provisional release. His request was rejected on 2 March 1992 on the ground that he was dangerous and suspected to flee the country.

On 19 May 1992 the First Instance Court of Athens, sitting in chambers (Symvoulio Plimmeliodikon), committed the applicant for trial.

On 23 June 1992 the applicant lodged with the above-mentioned court a request for provisional release. His request was rejected on 23 July 1992 by the Appeal Court of Athens, sitting in chambers (Symvoulio Efeton), on the ground that he was dangerous and that there was a considerable risk of absconding.

On 20 September 1992 the applicant lodged with the Appeal Court a new request for provisional release. His request was rejected on 27 October 1992 on the same grounds as the previous one.

On 23 December 1992 the Appeal Court of Athens, sitting in chambers, ordered the continuation of the applicant's provisional detention.

On 8 February 1993 the applicant was acquitted by the Criminal Court (Mikto Orkoto Dikastirio) of Athens. The Court further decided that no compensation should be given to the applicant for the time spent in prison between 16 January 1992 and 8 February 1993, because his detention "was due to his gross negligence".

2. Relevant domestic law and practice

a. Under Article 282 of the Code of Criminal Procedure, a person accused of a crime punishable with sentence of imprisonment of at least three months may be detained on remand if there exist serious indications of guilt and if this is strictly necessary to prevent the accused from committing further crimes or from absconding, or if the accused is considered to be particularly dangerous.

b. According to Article 285 para. 1 of the Code of Criminal Procedure, the accused may challenge, within five days, the warrant of detention on remand.

c. Under Greek law, the maximum time of detention on remand is 18 months (Articles 6 para. 4 of the Greek Constitution and 287 para. 2 of the Code of Criminal Procedure).

d. Article 533 para. 2 of the Code of Criminal Procedure reads as follows:

> "Persons who have been detained on remand and subsequently acquitted .... have the right to request compensation ...., if it has been established in the proceedings that they did not commit the criminal offence for which they have been detained on remand ....".

Article 535 para. 1 of the same Code provides the following:

> "The State does not have any obligation to compensate a person who ..... has been detained on remand if the latter, intentionally or by gross negligence, was responsible for his own detention."

COMPLAINTS

1. The applicant complains under Article 5 para. 1 c) of the Convention of his detention on remand which was unlawful in that there were no reasonable suspicions against him.

In particular, the applicant complains that the investigating judge and the Indictment Chambers did not respect national law when ordering his arrest and detention on remand and when rejecting his requests for conditional release, in that they failed to provide adequate reasons as required by Article 282 of the Code of Criminal Procedure.

2. The applicant complains that all legal documents concerning his arrest, his detention on remand and his committal for trial were notified to him in Greek, a language which he does not understand. He invokes Articles 5 para. 2 and 6 para. 3 a) of the Convention.

3. The applicant claims that the duration of his detention on remand exceeded the "reasonable time" and complains that he was not conditionally released. He invokes Articles 5 para. 3 and 6 para. 1 of the Convention.

4. The applicant complains that he did not receive compensation for having been unlawfully detained in breach of Article 5 para. 5 of the Convention.

THE LAW

1. The applicant complains under Article 5 para. 1 c) (Art. 5-1-c) of the Convention of his detention on remand which was unlawful in that there were no reasonable suspicions against him.

In particular, the applicant complains that the investigating judge and the Indictment Chambers did not respect national law when ordering his arrest and detention on remand and when rejecting his claims for conditional release, in that they failed to provide adequate reasons as required by Article 282 of the Code of Criminal Procedure.

Article 5 para. 1 c) (Art. 5-1-c) reads as follows:

> "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 nothing in the file indicates that the applicant challenged the warrant of detention on remand, pursuant to Article 285 para. 1 of the Code of Criminal Procedure. However, even assuming that the applicant has exhausted domestic remedies, this part of the application is manifestly ill-founded for the following reasons:

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 Commission and the Court, the provision refers back essentially to domestic law and lays down the obligation to conform to the substantive and procedural rules thereof (see Eur. Court H.R., Wassink judgment of 27 September 1990, Series A no. 185, p. 11, para. 23).

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

(see Eur. Court H.R., Kemmache judgment of 24 November 1994, Series A no. 296-C, para. 37).

In the present case, 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 order remanding him in detention nor the orders rejecting his claims for conditional release mention any elements which would have justified such a conclusion and alleges that the only reason for his arrest was his presence at the apartment where the three other persons were arrested.

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 (see 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, which detention is intended to facilitate, to prove the reality and nature of the offences charged (see Eur. Court H.R., Murray judgment of 28 October 1994, Series A no. 300, para. 55; No. 8224/78, Dec. 5.12.78, D.R. 15 p. 211; No. 9627/81, Dec. 14.3.84, D.R. 37 p. 15; No. 10803/84, Dec. 16.12.87, D.R. 54 p. 35).

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.

2. The applicant complains that all legal documents concerning his arrest, his detention on remand and his committal for trial were notified to him in Greek, a language which he does not understand. He invokes Articles 5 para. 2 and 6 para. 3 a) (Art. 5-2, 6-3-a) of the Convention.

Article 5 para. 2 (Art. 5-2) of the Convention reads as follows:

> "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."

Article 6 para. 3 a) (Art. 6-3-a) of the Convention provides the following:

> "Everyone charged with a criminal offence has the following minimum rights:
>
> a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him.
>
> (...)"

Insofar as the applicant complains under Article 5 para. 2 (Art. 5-2) of the Convention, the Commission notes that from the outset of the proceedings, namely his defence to the investigating judge of the Athens Court, the applicant was assisted by an interpreter and by his lawyer. The Commission considers that in these circumstances the applicant's complain is wholly unsubstantiated.

Insofar as the applicant complains under Article 6 para. 3 a) (Art. 6-3-a) of the Convention, the Commission recalls that this

provision lists in a non-exhaustive manner a certain number of rights, in the area of criminal law, which constitute essential elements of the general notion of a fair trial contained in Article 6 para. 1 (Art. 6-1) (see no. 8403/78, Dec. 14.12.81, D.R. 27 p. 61). Moreover, the Commission recalls that the question whether or not the right to a fair hearing has been respected should depend on an evaluation of the proceedings as a whole (see no. 10300/83, Dec. 12.10.84, D.R. 40 p. 180).

In this context, the Commission notes that the applicant was acquitted by a first instance court and that, therefore, he can no longer claim to be a victim of a violation of Article 6 para. 1 (Art. 6-1) 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 applicant claims that the duration of his detention on remand exceeded the "reasonable time" and complains that he was not conditionally released. He invokes Articles 5 para. 3 and 6 para. 1 (Art. 5-3, 6-1) of the Convention.

Article 5 para. 3 (Art. 5-3) of the Convention provides the following:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

Article 6 para. 1 (Art. 6-1) of the Convention reads as follows:

> "In the determination (...) of any criminal charge against him, everyone is entitled to a (...) hearing within a reasonable time (...)"

The Commission recalls at the outset that Article 6 para. 1 (Art. 6-1) applies to all parties to court proceedings and its aim is to protect them against excessive procedural delays. Article 5 para. 3 (Art. 5-3), for its part, refers only to persons charged and detained. It implies that there must be special diligence in the conduct of the prosecution of cases concerning such persons (see Eur. Court H.R., Stögmüller case, judgment of 10 November 1969, Series A no. 9, The Law para. 5).

In the present case the Commission notes that the applicant was detained between 16 January 1992 and 8 February 1993, namely less than 18 months which is, under Greek law, the maximum duration of detention on remand.

The Commission does not find, in this case, that there were unexplained delays, caused by the failure of the authorities to conduct the proceedings with the necessary diligence.

Furthermore, the Commission notes that the applicant's requests for conditional release were rejected because he was considered to be dangerous and suspected to flee the country. In view of these factors, the Commission considers that the decisions to maintain the applicant in detention on remand were not unreasonable.

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.

4. The applicant complains that he did not receive compensation for having been unlawfully detained in breach of Article 5 para. 5 (Art. 5-5) of the Convention.

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 (see 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.

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)