AS TO THE ADMISSIBILITY OF

Application No. 21300/93
by Abdallah MEHIAR
against Greece

The European Commission of Human Rights sitting in private on 10 April 1996, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
B. MARXER
I. CABRAL BARRETO
N. BRATZA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN

Mr. H.C. KRÜGER, Secretary to the Commission

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 March 1992 by Abdallah MEHIAR against Greece and registered on 1 February 1993 under file No. 21300/93;

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

Having regard to :

- the Commission's decision of 16 May 1994 to communicate the application;

- the observations in writing submitted by the respondent Government on 9 September 1994 and the observations in reply submitted by the applicant on 1 August 1995;

- the parties' oral submissions at the hearing on 10 April 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Lebanese national born in 1960. He is a captain in the merchant navy and is currently detained in Larissa prison in Greece. In the proceedings before the Commission he is represented by Mr. K. Terpos, a lawyer practising in Larissa.

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

On a date which has not been specified the applicant was arrested in Piraeus for importation, transportation and possession of drugs. On 17 December 1990 the applicant was placed in detention on remand in Koridallos prison.

On 12 May 1991 the applicant escaped together with 30 other prisoners. He was arrested a few hours later.

The applicant claims that he was brought to a police station, where he was told to sign a statement in Greek. As he could not understand the language, he asked to be given permission to consult his lawyer. However, his request was rejected and the applicant signed. He was then taken back to Koridallos prison together with twelve other detainees who had also attempted to escape. He was left to wait for four hours in an unspecified area from where he could hear the screams of the other persons who had been arrested that day. He was then brought to the office of the "deputy director" of the prison. He was not asked any questions. Instead, he was beaten by five wardens. The "deputy director" beat him first with a chain all over his body and insulted him with offensive words. Another warden beat him with sticks, while a third kicked him in the stomach and wounded him in the left eye-brow, which started to bleed. Finally, the last two wardens threw a desk at him. He submits that, at this moment, he thought he was going to die.

The applicant further claims that, later the same day, he was beaten by fifteen wardens on the head, joints and back until he collapsed.

After his arrest the applicant was placed in a "special cell".

The applicant claims that the cell was dark, that he was kept in isolation for 30 days and that on the first day he received neither food nor water. The applicant, who had been diagnosed as suffering from a chronic kidney problem in 1991, claims that he saw blood in his urine and that he had a strong headache. He asked to be examined by the prison doctor. There was allegedly no response to his request.

The Government submit that the applicant was placed in the "special cell" for five days by way of disciplinary punishment, that he was not subjected to sensory isolation, that he could have daily contact with a doctor and that he was regularly provided with food and drink. They have produced a copy of the decision of 13 May 1991 of the Disciplinary Board of Koridallos prison imposing on the applicant the disciplinary punishment of five days' detention in the special cell. They have also produced a letter addressed by Koridallos prison to the Agent of the Government on 4 July 1994 to the effect that the duration of the applicant's detention in the special cell was five days and not three days and that the applicant "was not deprived of anything which should have been provided to him according to the law" during that detention.

In a certificate issued by the director of Koridallos prison on 26 September 1995 it is stated that no disciplinary penalty was imposed on the applicant during his detention in Koridallos.

At the hearing on the admissibility and merits before the Commission, the applicant submitted press reports to the effect that the thirteen prisoners who had attempted to escape and had been arrested on 12 May 1991 appeared before the public prosecutor in connection with the escape charges on 13 May 1991. One of these prisoners, Mr. A.H., while waiting to be examined by the prosecutor told the journalists that he had been beaten by the prison guards when he was trying to escape. He asked the journalists to intercede so that he could be admitted to hospital and said that, if he returned to Koridallos prison, his life could be in danger. A newspaper carried a

photograph of A.H. with bruises on his back. It was also reported that on 14 May 1991 the thirteen prisoners appeared before the three-member First Instance Criminal Court (Trimeles Plimmeliodikio) of Piraeus in connection with some charges which could be examined under a special procedure for in flagrante offences. The court decided to adjourn until 15 May 1991 and the accused were transported to Koridallos prison.

According to the press reports submitted by the applicant, the thirteen prisoners re-appeared before the criminal court of Piraeus on 15 May 1991. The court decided to adjourn the examination of the case until 20 May 1991 because the lawyers were on strike. The accused asked not to be transferred back to Koridallos prison where they had been subjected to ill-treatment. The thirteen prisoners re-appeared before the criminal court of Piraeus on 20 May 1991. In the course of the hearing, one of the accused, Mr. K.H., claimed that they were being kept in the "special cells" in isolation and that they were not being given food. The court decided to adjourn the examination of the case, because some prosecution witnesses were not present. The prisoners were transported back to Koridallos prison.

The applicant claims that he was one of the persons who appeared before the public prosecutor on 13 May 1991. He contends that he complained on that occasion of ill-treatment. He also claims that he was one of the persons who appeared before the criminal court of Piraeus.

At the hearing before the Commission, the Government submitted that they were not in a position to state whether the above-mentioned press reports concerned the applicant.

The applicant claims that, after he had been released from isolation, he asked again for medical treatment without success on 22 July 1991. When he started crying in pain and asking for help he was dragged into the "deputy director's" office. He alleges that ten wardens, together with a Greek co-detainee, started beating him, calling him a "trouble maker", burning the skin of his right leg with cigarettes, punching him and threatening that they would hang him if he were to ask again for treatment because they wanted him to die. When the applicant fell on the floor, he was dragged back into his cell seriously wounded.

On 30 September 1991 the applicant was brought together with an unspecified number of other persons before the three-member First Instance Criminal Court of Piraeus to be tried for having caused physical harm to a warden, mutiny and escaping. He was not represented by counsel. The applicant claims that only those who were accused of having organised the escape had a lawyer. The applicant was found guilty and sentenced to two years and ten months' imprisonment. According to the applicant, those who were accused of organising the escape and were represented by legal counsel, and many Greek co-detainees, received lower sentences. The applicant appealed.

On 10 October 1991 the Koridallos prison administration informed the Public Prosecutor's Office of Piraeus that the applicant had requested an interview with a prosecutor.

On 17 October 1991 the applicant was convicted at first instance by the three-member Court of Appeal (Trimeles Efetio) of Piraeus of importation, transportation and possession of drugs. He was sentenced to life imprisonment. He appealed.

On 31 October 1991 the applicant complained of strong pains in the kidneys and head and was examined by the prison doctor who recommended his hospitalisation. He was immediately transferred to Nikea hospital.

According to the applicant, the results of his first examination

there confirmed the existence of serious injuries to both his kidneys and the continuing existence of blood in his urine. As a consequence, a general examination and treatment were prescribed. Nonetheless, he did not receive any medical treatment nor did he obtain a more detailed medical diagnosis, because the doctors were on strike.

On 5 November 1991 the applicant was transferred back to prison. The applicant claims that he was not officially discharged but was removed from the hospital at the insistence of the prison administration.

In a certificate issued by Nikea hospital on 24 December 1991 it is mentioned that the applicant had a kidney problem. By letter dated 18 January 1996 the Nikea hospital informed the Agent of the Government that, during the applicant's hospitalisation between 31 October 1991 and 5 November 1991, it was established that the applicant had some congenital kidney problems, that no operation was needed, that it could not be said that his kidneys did not function adequately, that the applicant had a blood count of 43,7% red blood cells which indicated that there could not have been a lot of blood in his urine and that he was discharged because there was no reason why he should be kept in hospital.

On 18 December 1991 the applicant was transferred to Patras prison. He claims that he immediately asked to be examined by a doctor but without any success. The Government have submitted a copy of the applicant's personal file which is being kept in Larissa prison. The file contains the medical record of the applicant's detention in Patras prison, where it is stated that the applicant had no health problems when he was admitted to that prison.

On 26 February 1992 Koridallos prison addressed a letter to Patras prison transmitting the medical record of the applicant's detention in Koridallos prison. No copy of that medical record has been submitted by the Government to the Commission. The Government contend that, as opposed to other documents concerning the applicant, the record had never been transmitted to Larissa prison and that it was destroyed during a riot in Patras prison on 28 February 1996.

The applicant claims that on 23 March 1992 he filed an application with the Office of the Public Prosecutor of Patras asking for a medical examination but received no reply. On 20 July 1992 he claims that he applied once more to the Public Prosecutor for a medical examination but was not successful. The applicant claims that he has sent his only copies of these letters to the Commission.

The Government contest that the applicant took any such steps. They refer in this connection to a certificate issued on 27 June 1994 from the medical authorities of Patras prison to the effect that the applicant never visited the prison surgery, a second certificate issued on 28 June 1994 by Larissa prison to the effect that there is no indication in the applicant's personal file that he ever applied to the Public Prosecutor's Office of Patras for a medical examination and a third certificate issued on 5 July 1994 by the Public Prosecutor's Office of Patras to the same effect.

On 27 July 1992 the applicant submitted a criminal complaint to the Public Prosecutor's Office of Patras complaining that some of his belongings had been lost when he was arrested in Piraeus. The complaint was registered and transmitted to the Public Prosecutor's Office in Piraeus.

On 31 July 1992 the applicant was transferred to Larissa prison.

On 8 June 1993 the three-member Court of Appeal of Piraeus upheld the applicant's conviction for mutiny and escape but acquitted him of having caused harm to a warden. The court further decided to reduce his

sentence to fifteen months' imprisonment. The applicant submits that he was not assisted by counsel at the hearing. He also claims that the sentence he received on appeal was not heavier than that imposed on the other persons whose appeal was heard on that day. He notes, however, that the appeal of the Greek co-accused at the original trial was heard on another day. The applicant did not appeal against the decision.

On 28 June 1993 Larissa prison transmitted to the Office of the Public Prosecutor of Piraeus a second criminal complaint lodged by the applicant concerning the loss of his belongings.

On 7 July 1993 the five-member Court of Appeal (Pentameles Efetio) of Piraeus upheld the applicant's conviction for importation, transportation and possession of drugs but reduced his sentence to eighteen years' imprisonment. The applicant appealed in cassation. The hearing was set for 15 February 1994.

On 2 August 1993 Larissa prison transmitted to the Office of the Public Prosecutor of the Court of Appeal of Piraeus a request by the applicant. In reply, the public prosecutor of the Court of Appeal of Piraeus instructed the secretariat of the appeal court to send the applicant a copy of the decision of 7 July 1993.

In October 1993 the applicant was admitted to Larissa hospital for his kidney problem.

On 8 December 1993 Larissa prison transmitted to the Office of the President of the Republic a letter by the applicant. The Office of the President of the Republic transmitted the letter to the Ministry of Justice on 16 December 1993. On 21 January 1994 the Ministry of Justice wrote to the Director of Larissa prison asking him to inform the applicant that the Ministry could not interfere with a pending appeal and instructing him to provide for medical care for the applicant, if such care was necessary.

On 26 January 1994 the Ministry of Justice wrote to the Director of Larissa prison asking him to inform the applicant that the Ministry could not deal with any of the questions raised by the applicant in a letter he had addressed to the Ministry of Justice, since these issues were under examination by the courts.

On 21 December 1993 Larissa prison transmitted to the Office of the Public Prosecutor of the Court of Cassation a letter by the applicant asking for permission to attend in person the hearing of 15 February 1994 on his appeal in cassation against the decision of 7 July 1993.

On 12 January 1994 the Public Prosecutor of the Court of Cassation informed the applicant that he could not attend in person the hearing of his appeal in cassation.

On 26 May 1994 the applicant addressed a letter to the Commission in which he referred to a radio report to the effect that the chief warden of Koridallos, Mr. A.F., had been charged with drug-trafficking inside Koridallos prison and other offences and that he had been arrested. The applicant claimed that A.F. was "the deputy-director" of Koridallos prison who had beaten him on 12 May 1991.

On a date which has not been specified the applicant's appeal in cassation was rejected.

On 25 October 1994 the applicant asked for permission to serve the sentence imposed on him for the drug-related offences concurrently with the sentence imposed on him for attempting to escape.

On 8 May 1995 Larissa prison transmitted to the Office of the Public Prosecutor of the Court of Appeal of Piraeus a letter by the

applicant concerning the possibility of serving his two sentences concurrently.

On 2 August 1995 it was reported in the Greek press that the three-member first instance criminal court of Piraeus, sitting in chamber, refused to order the provisional release of A.F., who had in the meantime been charged with having attempted to murder a public prosecutor who was investigating serious allegations of misconduct on the part of the Koridallos prison administration.

On 11 September 1995 and 20 December 1995 Larissa prison transmitted to the Office of the Public Prosecutor of the Court of Appeal of Piraeus two letters by the applicant. The Government contend that these letters related to the applicant's request for permission to serve his two sentences concurrently but have not provided copies of the letters. The applicant claims that he lodged with the Office of the Public Prosecutor of Piraeus a criminal complaint against a lawyer who had represented him in the proceedings for the drug-related offences.

In March 1996 it was reported in the Greek press that the sentence of A.F., who had been convicted for illegally keeping arms in his room in Koridallos prison, was reduced on appeal to four years and two months' imprisonment.

COMPLAINTS

1. The applicant complains under Article 3 of the Convention of repeated ill-treatment in prison and the consistent refusal of the prison authorities to provide him with medical assistance.

2. The applicant further alleges a violation of Article 6 para. 3 (c) of the Convention in that he was not assisted by a lawyer during the criminal proceedings against him on the escape and other related charges. He also complains that the court treated more favourably those co-accused persons who were Greek nationals.

3. Finally, the applicant complains of the wrongfulness of his conviction for drug-trafficking. He does not invoke any particular provision of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 6 May 1992 and registered on 1 February 1993.

On 16 May 1994 the Commission decided to communicate the application to the respondent Government and to request them to submit their written observations on admissibility and merits.

The Government's observations were submitted on 9 September 1994 after an extension of the time-limit fixed for this purpose. On 1 August 1995 the applicant submitted his observations in reply after an extension of the time-limit fixed for this purpose.

On 27 November 1995 the Commission decided to invite the parties to submit oral observations on the admissibility and the merits of the application at a hearing.

The hearing took place on 10 April 1996.

At the hearing the parties were represented as follows:

For the Government:

Mr. Phokion Georgakopoulos, Acting Agent, Senior Adviser, Legal Advisory Council of the State

Mr. Vassilios Kyriazopoulos, Legal Assistant, Legal Advisory Council of the State

For the applicant:

Mr. Konstantinos Terpos, Representative, Barrister

THE LAW

1. The applicant complains that he was repeatedly ill-treated or tortured in prison and that he was not given any medical assistance. He invokes Article 3 (Art. 3) of the Convention which reads as follows:

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

The Government submit that the applicant has not exhausted domestic remedies, because he never attempted to bring his complaints to the attention of the prison director, the public prosecutor or the court entrusted with supervising the execution of his penalty. Neither did he institute civil proceedings against the State for compensation. The Government contend that these are effective remedies and refer, by way of example, to a decision of the three-member First Instance Criminal Court of Piraeus which found a prison warden guilty of causing physical harm to a prisoner.

The Government further submit that the applicant had under domestic law the right to communicate freely and in conditions of confidentially with all public authorities outside the prison. This is evidenced by the fact that the applicant was able to lodge a criminal complaint concerning the loss of his belongings at the time of his arrest in Piraeus. He was also able to submit various other requests to different public prosecutors.

The applicant submits that he did not attempt to raise his complaints concerning ill-treatment in Koridallos for fear of reprisals by the prison administration. In this connection he has submitted a statement by a co-detainee to the effect that none of the persons who had escaped on 12 May 1991 had attempted to complain about the ill-treatment to which they had been subjected because they had been threatened by the deputy prison director and his assistants. He also refers to the press reports concerning the criminal proceedings which were subsequently instituted against the Koridallos chief warden.

The applicant further submits that the remedies invoked by the Government are not effective because there have been very few or no convictions of prison officers for ill-treatment of detainees in Greece. Moreover, the courts have very rarely or never awarded compensation to detainees suing the State for injuries they had suffered in prison. In any event, the public prosecutor should have instituted criminal proceedings proprio motu when he had been informed from the press that the persons who had attempted to escape on 12 May 1991 had complained of ill-treatment.

The applicant finally claims that his various applications for a medical examination to the Public Prosecutor's Office of Patras were not answered.

The Commission notes that many of the facts of the case are in dispute between the parties. Following its standard practice, it will examine the case on the basis of all the material before it and will not rely on the concept that the burden of proof is borne by either the respondent Government or the applicant. The Commission wishes, however, to stress that the Contracting Parties have a duty to co-operate with the Convention institutions in arriving at the truth (Eur. Court H.R., Artico judgment of 13 May 1980, Series A no. 37, p. 15, para. 30).

The Commission considers that the respondent Government have not provided a satisfactory explanation for the various inconsistencies in the records of Koridallos prison concerning the reasons for the applicant's detention in the "special cell" and its duration as well as for the failure of Patras prison to transmit part of the applicant's personal file to Larissa prison. It also notes that they have not provided copies of various letters the applicant addressed to State authorities from Larissa prison. Moreover, at the hearing before the Commission they claimed not to be in a position to specify whether the applicant was among the thirteen accused persons mentioned in the various press reports in May 1991.

The Commission considers that, in a modern society, the failure of the domestic authorities to keep proper records cannot be relied on by a respondent Government as a valid explanation for not being fully able to co-operate with the Commission in the establishment of the truth. However, the Commission considers that it has enough elements in its possession for deciding on the admissibility of the application.

The Commission recalls that, under Article 26 (Art. 26) of the Convention, it "may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law". In accordance with its case-law, compensation may in normal circumstances be an adequate and sufficient remedy in respect of a complaint of ill-treatment in violation of Article 3 (Art. 3) (No. 8462/79, Dec. 8.7.80, D.R. 20 p. 184). It follows that one at least of the remedies suggested by the Government would be in principle an effective remedy for the applicant's complaints: lodging a criminal complaint with the public prosecutor with a view to joining the proceedings as partie civile and asking for damages (see, in respect of Greece, No. 23916/94, Dec. 6.4.95, unpublished; and in respect of other jurisdictions, mutatis mutandis, No. 10078/82, Dec. 13.12.84, D.R. 41 p. 103; Nos. 16311/90, 16312/90 and 16313/90, Dec. 11.10.91, D.R. 72 p. 200).

The Commission further considers that the applicant's allegations concerning the rate of convictions of prison officers accused of having ill-treated detainees are too vague to justify departing from the above-mentioned case-law in the present case.

The Commission notes with some concern that, although the allegations of ill-treatment of the prisoners who attempted to escape on 12 May 1991 received extensive press coverage, the competent public prosecutor did not take proprio motu any steps to investigate the possibility of criminal offences having been committed. Neither did he take any such steps when the application was communicated to the respondent Government.

The Commission, however, considers that the failure of the public prosecutor to institute criminal proceedings proprio motu does not dispense the applicant from the obligation under Article 26 (Art. 26) of the Convention to raise himself his complaints with the competent domestic authorities. In accordance with the Commission's case-law, the mere existence of doubt as to the effectiveness of a particular remedy does not itself excuse an applicant from the obligation to exhaust it (No. 9856/82, Dec. 14.5.87, D.R. 52 p. 38).

The Commission also notes the applicant's submissions concerning threats of reprisals which had allegedly prevented him from attempting to exhaust the particular remedy while in detention in Koridallos prison. However, the Commission considers that the applicant could have lodged a criminal complaint after he had been transferred from Koridallos prison.

Finally, the Commission cannot accept the applicant's version of events concerning his attempts to obtain a medical examination, by

complaining to the Public Prosecutor's Office, while he was detained in Patras prison. It notes in this respect that, although the applicant claims to have sent his only copies of the relevant letters to the Commission, no such copies were ever received by the Commission's Secretariat. Moreover, the Public Prosecutor's Office in Patras duly registered another complaint by the applicant concerning the loss of his belongings during his arrest.

It follows that the applicant has not satisfied the condition in Article 26 (Art. 26) concerning the exhaustion of domestic remedies and that this part of the application must be rejected in accordance with Article 27 para. 3 (Art. 27-3) of the Convention

2. The applicant complains under Article 6 para. 3 (c) (Art. 6-3-c) of the Convention that he was not assisted by a lawyer during the criminal proceedings against him on the escape and other related charges. He also complains that the court treated more favourably those co-accused persons who were Greek nationals. He submits that he did not appeal against the decision of the Court of Appeal of 8 June 1993 because the proceedings before the Court of Cassation could be expected to last at least three years.

The Commission recalls that Article 6 para. 3 (c) (Art. 6-3-c) of the Convention guarantees the right of everyone charged with a criminal offence to defend himself in person or through legal assistance of his own choosing. Moreover, Article 14 (Art. 14) of the Convention guarantees the right of everyone not to be discriminated against in the enjoyment of the rights set forth in the Convention, including the right to a fair hearing by an impartial tribunal in the determination of any criminal charge against him.

The Commission is not, however, called upon to decide whether the facts alleged by the applicant disclose an appearance of a violation of those provisions. Under Article 26 (Art. 26) of the Convention, "the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law". Appealing in cassation against the decision of 8 June 1993 of the Court of Appeal of Piraeus would have been the most effective way for the applicant to attempt to obtain redress for his grievances at the domestic level. Moreover, no particular circumstances are disclosed which would have released the applicant from the obligation to exhaust this remedy. In particular, the applicant has not substantiated his allegations that proceedings before the Court of Cassation could be expected to last more than three years.

It follows that the applicant has not satisfied the condition of exhaustion of domestic remedies and that this part of the application must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

3. Finally, the applicant complains of the wrongfulness of his conviction for drug-trafficking. He does not invoke any particular provision of the Convention.

The Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with complaints alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights or freedoms set out in the Convention (No. 458/59, Dec. 29.3.60, Yearbook 3 p. 222; No. 5258/71, Dec. 8.2.73, Collection 43 p. 71; No. 7987/77, Dec. 13.12.79, D.R. 18 p. 31). The Commission considers that, in the particular circumstances of the applicant, this is not the case.

It follows that this part of the application must be declared

inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (S. TRECHSEL)