AS TO THE ADMISSIBILITY OF

Application No. 19774/92
by Nicolaos SAMPSON
against Cyprus

The European Commission of Human Rights sitting in private on 9 May 1994, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
A. WEITZEL
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
F. MARTINEZ
Mrs. J. LIDDY
MM. J.-C. GEUS
M.P. PELLONPÄÄ
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY

Mr. M. de SALVIA, Deputy 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 20 March 1992 by Nicolaos SAMPSON against Cyprus and registered on 27 March 1992 under file No. 19774/92;

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 Cypriot citizen born in 1935, residing at Nicosia and a journalist by profession. Before the Commission he is represented by Mr. Em. Christofides, an attorney practising in Nicosia.

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

On 15 July 1974, a coup d' état carried out by members of the military forces, overthrew Archbishop Makarios, President of the Republic of Cyprus, and took control of the Government for eight days. The applicant was nominated President of Cyprus.

On 31 August 1976, the applicant was convicted by the Assize Court of Nicosia of offences against the constitutional order of the Cyprus Republic in accordance with Sections 40 and 41 of the Criminal Code of Cyprus. He was given a mandatory sentence of 20 years imprisonment.

On 7 February 1977, the Supreme Court of Cyprus rejected the

applicant's claim for amnesty under Section 69 of the Code of Criminal Procedure. The Court found that the applicant, in the absence of a legislative act, could not be granted amnesty by virtue only of an oral general statement of amnesty made by the President, Archbishop Makarios, on 7 December 1974.

Nevertheless, the applicant's sentence was reduced as a result of the President's exercise of the prerogative of mercy granted to all imprisoned on two occasions, on 17 August 1977, when his sentence was reduced to 16 years and 8 months, and on 28 February 1978, when his sentence was reduced to 12 years and 8 months.

On 21 April 1979, the President of the Republic of Cyprus, in the exercise of his constitutional powers, ordered the applicant's conditional release in order to allow his transfer to a hospital in France. The President did not specify the exact duration of the applicant's release but that depended on the time needed for the completion of his medical treatment.

On 15 December 1980, as the applicant did not use his release for the purpose of medical treatment, the President revoked his conditional release and recalled that the applicant still had to serve the rest of his sentence. From the initial sentence, as reduced in 1978, 10 years and 9 days remained to be served by the applicant. The applicant received notification of the revocation order through his lawyer.

However, the applicant remained in France and did not return to serve his sentence. The authorities of Cyprus did not request his extradition from France.

On 27 June 1990, the applicant went back to Cyprus. He surrendered voluntarily to the prison authorities but reserved his right to challenge the legality of his imprisonment.

On 6 August 1991, the applicant applied for Habeas Corpus before the Supreme Court challenging the lawfulness of his imprisonment after 27 June 1990.

On 6 September 1991, the Supreme Court (first Instance jurisdiction) granted the applicant's request. The Court found that, although the applicant did not serve his fixed term, his official date of release was 30 April 1989, i.e. before he surrendered to the prison authorities, and that there were no legal grounds for his further detention. The applicant was immediately released.

On 9 September 1991, the Attorney General filed an appeal before the Supreme Court (second instance jurisdiction) against the Habeas Corpus order. The Attorney General argued that the execution of the applicant's sentence had been suspended, first, from 21 April 1979 until 15 December 1980 and, secondly, from 15 December 1980 until 27 June 1990 and that as a result his sentence was due to expire on 6 February 1994 and not on 30 April 1989.

On 25 September 1991, the applicant filed an application before the Supreme Court (second instance jurisdiction) for the reopening of the hearing before the Court's deliberations. The Court rejected his application on the ground that the applicant did not provide any new elements which would justify the re-opening of the proceedings.

By judgment of 26 September 1991, the Court allowed the Attorney General's appeal and held that the applicant's detention after 27 June 1990 was lawful. The Court found that, although the applicant's sentence had been suspended from 21 April 1979 until 15 December 1980, he still had to serve this part of his sentence. Moreover, the Court found that the conditional release merely suspended the sentence which, as a direct consequence of the conviction, was reactivated by virtue of the revocation of the conditional release, on 15 December 1980, and

served as an authorisation and order of imprisonment of the applicant. After the revocation of the suspension of his sentence the applicant had to serve the remainder of his initial term. For these reasons, the Court found that there were legal grounds for his imprisonment after 27 June 1990.

On 26 September 1991, following the Court's judgment, the applicant was reimprisoned.

COMPLAINTS

The applicant complains that his detention after the term of his sentence had formally expired constitutes a breach of Article 5 paras. 1, 2, 3 and 4 of the Convention. He argues, that, notwithstanding the fact that his sentence of imprisonment was originally fixed by law after conviction by a competent court, he remained imprisoned although his sentence had expired. He claims that, according to the Cypriot laws, he could not be detained in prison after 30 April 1989 unless he had been brought again before a court and received a fresh term of imprisonment. Moreover he argues that, on two occasions, on 27 June 1990, when he returned to Cyprus, and on 26 september 1991, after the Supreme Court's judgment, he was imprisoned without a reasoned court order provided by law.

The applicant also argues that from all those who participated in the military coup against the legitimate government of Makarios he was the only one to remain imprisoned while the others had already been released. He alleges that this kind of treatment is contrary to Article 5 paras. 1, 2, 3 and 4 and Articles 6 and 14 of the Convention.

The applicant also alleges that the Supreme Court by allowing the appeal against the Habeas Corpus writ and by rejecting the applicant's request to reopen the hearing breached Article 6 para. 1 and Article 14 of the Convention.

Finally the applicant alleges that the above constitutes breaches of Articles 3, 8 and 14 of the Convention.

THE LAW

1. The applicant complains that his continued detention notwithstanding that his initial term of sentence had expired, constituted a violation of his rights under Article 5 paras. 1, 2, 3 and 4 (Art. 5-1, 5-2, 5-3, 5-4) of the Convention, which provide as follows:

> "1. 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:
>
> (a) the lawful detention of a person after conviction by a competent court; . . .
>
> 2. 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.
>
> 3. 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.
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

The Commission finds that the applicant's complaint falls to be examined under the provisions of Article 5 para. 1 (a) (Art. 5-1-a) of the Convention as it is not disputed that the applicant was convicted in 1976 by a competent court.

The Commission recalls its case law according to which the justification for a person's continued detention on the basis of a sentence imposed on him is normally considered to have been provided by the original conviction and that such detention therefore constitutes a "lawful detention ... after conviction by a competent court" within the meaning of Article 5 para. 1 (a) (Art. 5-1-a) of the Convention (see N° 9089/80, Dec. 9.12.80, D.R. 24 p. 227). In particular, the detention must result from, follow and depend upon or occur by virtue of the "conviction". In short, there must be a sufficient causal connection between the conviction and the deprivation of liberty at issue (see Eur. Court H. R., Weeks judgment of 2 March 1987, Series A no. 114, p. 23, para. 42).

The Commission considers that the question at issue here is whether the applicant's detention after 27 June 1990 may be considered a lawful detention of a person after conviction by a competent court.

The Commission recalls that the Court has confirmed that Article 5 para. 1 (a) (Art. 5-1-a) which is silent as to the permissible forms of legal machinery whereby a person may lawfully be ordered to be detained "after conviction", must be taken to have left the Contracting States a discretion in the matter (see Eur. Court H.R., Monnell and Morris judgment of 2 March 1987, Series A no. 115, p. 19, para. 47).

The Commission notes that the Supreme Court (second instance jurisdiction) of Cyprus confirmed that the period from 15 December 1980 until 27 June 1990 during which the applicant did not serve his sentence in Cyprus did not count towards his sentence. With this finding the court neither imposed a fresh sentence for a fresh offence nor increased the term of the original sentence passed by the Nicosia Assize Court.

The Commission finds that there is a clear connection between the initial conviction and the period of imprisonment undergone after 27 June 1990. The Commission finds that the time spent in prison as from that date by the applicant is to be regarded as "detention of a person after conviction by a competent court", within the meaning of subparagraph (a) of Article 5 para. 1 (Art. 5-1-a).

Therefore, the Commission concludes that there is no appearance of a violation of Article 5 (Art. 5) of the Convention and that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also alleges that the Supreme Court, by sustaining the Attorney General's appeal against the Habeas Corpus writ and by rejecting the applicant's request to reopen the hearing on appeal, committed a breach of Article 6 para. 1 (Art. 6-1) which provides as follows:

> "In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..."

As regards the applicant's complaint about the decision ordering his return to detention the Commission recalls that it does not concern a decision on the "determination of any criminal charge" within the meaning of Article 6 para. 1 (Art. 6-1) (see 7648/76, Dec. 6.12.77, D.R. 11, p. 190).

Therefore, it follows that this complaint should be rejected as incompatible ratione materiae with the Convention, within the meaning of

Article 27 para. 2 (Art. 27-2).

3. Finally the applicant alleges violations of Articles 3, 8 and 14 (Art. 3, 8, 14) of the Convention.

The Commission finds that these complaints are wholly unsubstantiated. It follows that they are 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.

Deputy Secretary to the Commission — President of the Commission

(M. de SALVIA) — (C.A. NØRGAARD)