AS TO THE ADMISSIBILITY OF

Application No. 24453/94
by Ali TARICHI WAGEH DASHTI
against Greece

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

MM. C.A. NØRGAARD, President
S. TRECHSEL
A. WEITZEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
G. RESS

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 5 April 1993 by Ali TARIGHI WAGEH DASHTI against Greece and registered on 22 June 1994 under file No. 24453/94;

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 an Iranian citizen born in 1961 in Iran and currently detained in the prison of Larissa in Greece. In the proceedings before the Commission he is represented by Mr. S. Katsios, a lawyer practising in Thessaloniki.

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

Between August 1981 and March 1984, while he was a student, the applicant worked as an accountant in a firm in Iran. He was dismissed on 23 March 1984, allegedly as a result of his refusal to provide information on his colleagues to an "islamic commission" which supervised the activities of the personnel of the firm. In accordance with a certificate provided by his former employer, a translation of

which the applicant has submitted to the Commission, he was made redundant "because of his non-islamic ideas".

Having been dismissed on that ground, the applicant claims that he was unable to find other employment and was, as a result, forced to abandon his studies. Moreover, he was subjected to surveillance and was interrogated once a month by the revolutionary guard. At a certain point in time, which the applicant does not specify, his brother left Iran. He was allegedly granted political asylum in Germany.

The applicant followed suit in February 1989. He crossed the Iranian border on foot. The applicant claims that in Istanbul he discovered that his passport had expired. He applied for a renewal at the local Iranian Consulate, which refused his application and kept all his documents. In the opinion of the applicant, this happened because he had been officially declared a dissident.

The applicant entered Greece illegally in February 1989. He was arrested in the border town of Ferres, near the river Evros, which defines the boundary between Greece and Turkey. He was convicted of illegal entry at a date and by a court which he does not specify. The applicant applied for political asylum and was released.

Upon his arrival in Athens the applicant claims to have met H, an Iranian citizen, in whose flat he stayed between 1 and 10 November 1989, as a lodger. On 10 November 1989 the police conducted a search in the flat and discovered, in the applicant's presence, drugs. On that date the police arrested the applicant and LA, another Iranian citizen, who stayed in the same flat and who inadvertently had led the police to it. On 11 November 1989 the police arrested in the same flat another Iranian citizen, RH.

The applicant appeared before the investigating judge on 12 and 14 November 1989, when he was placed in detention on remand.

On 21 November 1989 the investigating judge summoned H to appear before him and on 28 November 1989 he issued a warrant of arrest against him.

On 5 December 1989 the investigating judge charged a psychiatrist with providing an expert opinion, which the latter did on 15 December 1989.

On 29 December 1989 the investigation was concluded and the case-file was sent to the Public Prosecutor's Office. On 25 January 1990 the case-file was submitted to the Public Prosecutor of the Court of Appeal. On 12 February the latter requested the President of the Court of Appeal to agree to the applicant's, RH's, LA's and H's committal before the three-member Court of Appeal (Trimeles Efeteio) of Athens for possession of drugs, drug-trading, and participation in a criminal gang. He considered that the court of appeal was competent to hear the case because of the nature of the offences.

On 27 February 1990 the President of the Court of Appeal acceded to the prosecutor's request and renewed the investigating judge's order for the detention of the applicant. On 26 October 1990 the Court of Appeal of Athens, sitting in chambers, authorised the prolongation of the applicant's detention for another six months.

On 11 May 1990 the Public Prosecutor of the Court of Appeal of Athens summoned the applicant and the other three co-accused to appear before the Court of Appeal of Athens on 16 November 1990. The hearing of that date was, however, postponed because no interpreter for the Persian language was present.

The trial took place on 8 March 1991 in the absence of H, whom the police had not succeeded in apprehending. The applicant claimed

that he was H's lodger and that he had no connection with or knowledge of the drug-trading. His co-accused confirmed his version of events.

The Court of Appeal convicted the applicant and sentenced him to 10 years imprisonment and a fine of GDR 500.000 for possession of drugs and acquitted him of the remaining charges. LA and RH were convicted of drug-trading. They all appealed.

The hearing of the appeal was fixed for 21 October 1992. Due to its work-load, however, the five-member Court of Appeal (pentameles efeteio) of Athens decided to postpone the hearing unitl the next day.

In the evening of 21 October 1992 the Athens Bar declared a strike. The applicant who was represented by a member of the Thessaloniki Bar requested the severing of his case from that of LA who was represented by two members of the Athens Bar. The court, however, refused the request. The applicant claims that the hearing was adjourned until 6 June 1994.

After repeated protests by defence counsel, the Public Prosecutor ordered that the appeal should be heard on 20 October 1993. The case was not heard, however, on that date and was initially adjourned for the next day. Defence counsel not being able, however, to appear on 21 October 1993, the court decided, on their request, to adjourn the hearing unitl 12 January 1994.

On 12 January 1994 the Court of Appeal confirmed the first instance court's decision, but reduced the applicant's penalty to four years and six months imprisonment and a fine of GDR 300.000. It further ordered the applicant's expulsion and permanent exclusion from Greece.

The applicant should have been released on 10 May 1994, his detention on remand having been counted against his sentence. However, he is still detained, not being in a position to pay the fine.

In September 1994 the applicant applied for political asylum for the second time. He was then informed orally that his earlier application had been rejected by the Ministry of Public Order on 11 December 1990 and that his new application would not be examined in the absence of any fresh information. The applicant claims that the text of the decision of 11 December 1990 was never made available to him.

The applicant has been further informed that he will be deported on 29 December 1994.

COMPLAINTS

1. The applicant complains that Art. 3 of the Convention has been violated, as a result of the length of the proceedings and his unfair conviction which deprives him in effect of the possibility of being recognised as a political refugee in Greece. He further complains that, if deported to Iran, his freedom, physical integrity and life will be in danger, because of his dissident status. He claims that his family there is constantly subjected to surveillance and threats on account of his and his brother's fleeing abroad and their being "enemies of the revolution". He further claims that, as a result of the failure of the Greek authorities to notify to him the decision rejecting his application for asylum, he has not been able to challenge it before the domestic courts.

2. The applicant complains about the length of his pre-trial detention under Article 5 para. 3 of the Convention.

3. The applicant complains of a violation of Article 6 para. 1 of the Convention in that he was summarily tried by a tribunal which was not impartial and which convicted him in the absence of any evidence other than his accidental presence in a flat where drugs were found.

He also complains about the length of the proceedings.

4. The applicant complains of a violation of Article 14 of the Convention in that he was discriminated against by the domestic courts because of his nationality and religion.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 5 April 1993 and registered on 22 June 1994.

On 7 November 1994 the applicant applied for a Rule 36 indication. On 9 December 1994 the Commission decided not to apply Rule 36.

THE LAW

1. The applicant complains under Article 3 (Art. 3) of the Convention of the length of the criminal proceedings against him, his unfair conviction and his eventual expulsion to Iran.

The Commission recalls that according to Article 3 (Art. 3) of the Convention no one shall be subjected to inhuman or degrading treatment or punishment.

Insofar as the applicant claims that he has been subjected to such treatment because of the length of the proceedings against him and the unfairness of his conviction, the Commission recalls that, in accordance with the case-law of the Court, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3) of the Convention (Eur. Court H.R., Ireland v. United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 162). Even assuming that the applicant has exhausted in this connection domestic remedies in accordance with Article 26 (Art. 26) of the Convention, the Commission considers that the minimum level of severity required under the Court's case-law has not been attained in the situation complained of. As a result, no appearance of a violation of Article 3 (Art. 3) of the Convention is disclosed.

Insofar as the applicant claims that he will be subjected to inhuman treatment if deported to Iran, the Commission recalls that, in accordance with the case-law of the Court, the decision of a Contracting State to deport a foreigner might give rise to an issue under Article 3 (Art. 3) of the Convention where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to that provision (Eur. Court H.R., Cruz Varas judgment of 20 March 1991, Series A no. 201, p. 28, para. 70).

However, the Commission notes that the applicant has failed to provide any indication that Iran has been already formally designated as the country to which he will be deported. It further notes that Articles 546-572 of the Code of Criminal Procedure provide for the convicted person's right to submit to the competent court any objections he may have concerning the enforcement of his sentence. The applicant has not adduced any convincing reasons why he would not be in a position to raise effectively in the context of such proceedings his arguments concerning the risks of ill-treatment in Iran. The Commission finally considers that the applicant has failed to substantiate his allegations that he faces a real risk of being subjected to inhuman or degrading treatment in Iran.

In these circumstances, the Commission considers that the situation complained of does not disclose any appearance of a violation of Article 3 (Art. 3) of the Convention. As a result, this part of the application must be rejected as manifestly ill-founded in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains about the length of his pre-trial detention under Article 5 para. 3 (Art. 5-3) of the Convention.

The Commission recalls that Article 5 para. 3 (Art. 5-3) of the Convention guarantees the right to trial within a reasonable time or to release pending trial.

However, the Commission does not consider it necessary to examine whether the applicant's allegations disclose an appearance of a violation of Article 5 para. 3 (Art. 5-3) of the Convention. The Commission recalls that, under Article 26 (Art. 26) of the Convention, it may only deal with a matter after all domestic remedies have been exhausted.

In the present case, however, the applicant never applied for temporary release after he had been placed in detention on remand (No. 9172/80, Dec. 17.12.81, D.R. 27 p. 222). In these circumstances, the Commission considers that, insofar as his complaints regarding pre-trial detention are concerned, the applicant has not exhausted domestic remedies as required by Article 26 (Art. 26) of the Convention.

It follows that this part of the case must be rejected pursuant to Article 26 and Article 27 para. 3 (Art. 26, 27-3) of the Convention.

3. The applicant complains of a violation of Article 6 para. 1 (Art. 6-1) of the Convention in that he was summarily tried by a tribunal which was not impartial and which convicted him in the absence of any evidence other than his accidental presence in a flat where drugs were found. He also complains about the length of the proceedings.

The Commission recalls that Article 6 para. 1 (Art. 6-1) of the Convention guarantees the right of everyone to have a fair hearing in the determination of a criminal charge against him within a reasonable time by an independent and impartial tribunal.

Insofar as he complains that he was summarily tried by a tribunal which was not impartial and which convicted him in the absence of any evidence, the Commission considers that the applicant complains in essence of the outcome of the criminal proceedings against him. The Commission recalls, however, that 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 and freedoms set forth in the Convention (No. 12013/86, Dec. 10.3.89, D.R. 59 p. 100). Considering that there is no indication that the national courts drew in the applicant's case unfair or arbitrary conclusions from the facts before them, the Commission concludes that the situation complained of does not disclose an appearance of a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

Insofar as the applicant complains of the length of the proceedings, the Commission considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary in accordance with Rule 48 para. 2(b) of the Rules of Procedure, to give notice of this part of the application to the respondent Government.

4. The applicant complains of a violation of Article 14 (Art. 14) of the Convention in that he was discriminated against by the domestic courts because of his nationality and religion.

However, insofar as the matters complained of have been substantiated and are within its competence, the Commission finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaint concerning the length of the criminal proceedings;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)