AS TO THE ADMISSIBILITY OF

Application No. 28522/95
by Nazmi TOSUNOGLU
against Greece

The European Commission of Human Rights (First Chamber) sitting in private on 4 September 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
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 6 March 1995 by Nazmi TOSUNOGLU against Greece and registered on 12 September 1995 under file No. 28522/95;

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

Having regard to the information submitted by the respondent Government on 24 December 1995 and 21 March 1996 and the comments by the applicant in reply dated 22 March 1996 and 8 June 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Turkish national. He was born in 1956. He is currently held in Trikala prison, in Greece.

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

On 1 December 1988 the applicant was convicted by the three-member Court of Appeal of Athens (trimeles efetio) to 13 years imprisonment for robbery.

On 17 October 1989 the Disciplinary Board of Trikala prison imposed on the applicant the disciplinary penalty of five days detention in the segregation unit on the ground that he had engaged himself in a fight with another prisoner for no apparent reason.

On 14 June 1991 a disciplinary penalty of ten days detention in the segregation unit was imposed on the applicant for having tried to escape from Trikala prison.

On 18 June 1991 the applicant was transferred to Larissa prison.

On the same day a disciplinary penalty of ten days detention in the segregation unit was imposed on him for having attacked a prison warden.

Between 5 September 1994 and 28 January 1995 the applicant attended a computer training course.

On 2 March 1995 the applicant was transferred from Larissa prison to a detention centre in Athens. The applicant claims that, when he arrived there, at around 22h00, he reported to the policemen who had escorted him that his suitcase was missing. The policemen reacted by shouting at him, pushing him and beating him. The applicant threw himself on the suitcases face downwards. The policemen forced him into the detention centre by kicking him and pulling him by the hair.

On 3 March 1995 the applicant was transferred to Tripoli prison. and on 7 March 1995 to the open prison of Tirintha. However, on 8 March 1995 the director of Tirintha prison requested that the applicant be transferred to a higher security prison because there was a high risk that he might attempt to escape.

On 16 March 1995 the Greek Ministry of Foreign Affairs was notified by the Turkish Embassy that the applicant had complained that he had been subjected to ill-treatment during his transfer from Larissa to Tripoli prison. The Ministry of Foreign Affairs contacted the Ministry of Justice which contacted the prison authorities of Larissa, Tripoli and Tirintha. The latter replied that the applicant had never complained of ill-treatment. The prison authorities of Tirintha specified that the applicant had been examined on his arrival there by a doctor who had not reported any evidence of ill-treatment. The applicant's complaint was forwarded to the Ministry of Public Order.

On 5 April 1995, the applicant was transferred to Halkida prison. On a date not specified, the applicant claims to have reported the above ill-treatment incident to a public prosecutor who visited the prison. The applicant claims that the public prosecutor refused to entertain his complaint invoking lack of competence ratione loci.

On 16 June 1995 the Police Director of Athens ordered an administrative inquiry into the applicant's allegations. On 18 July 1995, the applicant was visited by a policeman who asked him to make a statement concerning the alleged ill-treatment incident.

On 1 September 1995 the administrative inquiry was concluded. In his report, the police officer who conducted the inquiry noted that he had examined a number of documents and heard the police officers implicated in the incident. He also noted that the Ministry of Foreign Affairs had failed to communicate to the Police the letter which the applicant had addressed to the Turkish Embassy complaining of ill-treatment.

The following facts had been established. The applicant arrived, together with 21 other prisoners, in the detention centre in Athens on 2 March 1995. In order to eliminate the risk of escaping, the police officers who had escorted the applicant formed with their bodies a corridor leading from the door of to the boot of the bus where the luggage of the prisoners could be found. The prisoners had to cross that corridor in order to recover their luggage. The applicant, pretending that he was tired from the long journey, tried to obstruct the procedure, appeared to be restless and attempted to start a conversation with one of the escorts. The experienced members of the escort recognised a well-known method used by prisoners in their attempts to escape. Two of them intervened and conducted the applicant directly to the detention centre. His luggage was subsequently given to him.

No officer pushed the applicant. The officers "realised the

applicant's intentions and acted in a preventive manner, unfortunately for him." In any event, the police officer who conducted the inquiry considered "it is not advisable in the circumstances to push a prisoner, because he may take advantage of that fact and break the human corridor and escape". His conclusion was that the applicant's allegations were unfounded and that they must be attributed to the applicant's frustration with his failure to escape. In the light of the above, the officer who conducted the inquiry considered that no disciplinary action should be taken against the officers implicated in the incident.

On 14 September 1995 the Police Director of Athens agreed with the recommendations of the officer who conducted the inquiry. On 2 October 1995 the General Director of the Police also approved.

On 19 October 1995, the applicant applied to the director of Halkida Prison for a conditional release. On 20 October 1995 the director of Halkida prison decided that 20 prisoners should be moved away from Halkida prison to facilitate the undertaking of refurbishment work. On 26 October 1995 the applicant, together with 19 other prisoners, was transferred to Trikala prison.

On 14 December 1995 a special chamber of the first instance criminal court (Simvulio Plimmeliodikon) of Trikala decided that the applicant should not be conditionally released. The applicant appealed.

On 2 February 1996 a special chamber of the court of appeal (Simvulio Efeton) of Trikala upheld the decision of the first instance court on the ground that the applicant's behaviour in prison had not been good. The court made reference to the disciplinary offences committed by the applicant.

On a date which has not been specified the applicant was transferred to Agia prison in Hania, Crete. He was then conditionally released.

COMPLAINTS

1. The applicant complains that he was subjected to ill-treatment on 2 March 1995. He invokes Article 3 of the Convention.

2. The applicant further complains that the refusal of the authorities to grant him a conditional release constitutes a violation of Article 7 of the Convention. It also amounts to a violation of Article 25 of the Convention, in that it constitutes reprisals for the application he has lodged with the Commission.

3. Finally, the applicant complains that he is being refused a fee he is entitled to for having attended the computer training programme.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 6 March 1995 and registered on 12 September 1995.

On 14 December 1995 the Secretary of the Commission, acting on the instructions of the Rapporteur, requested the Government of Greece to inform him before 1 February 1996 whether the applicant had complained about the alleged ill-treatment to the Greek authorities and, if so, whether an investigation was under way.

The Government replied on 24 December 1995 and sent additional information on 21 March 1996. The applicant submitted written comments on 22 March 1996 and 8 June 1996.

THE LAW

1. The applicant complains under Article 3 (Art. 3) of the Convention that he was subjected to ill-treatment on 2 March 1995.

The Commission notes that the applicant claims to have raised his complaints orally with a public prosecutor, who allegedly refused to entertain them invoking his lack of competence ratione loci. It also notes that the applicant's allegations have been examined by the police authorities in the context of an administrative inquiry which concluded that no action need be taken. However, the Commission does not consider it necessary to examine whether, in these circumstances, the applicant can be exempted from the obligation to exhaust domestic remedies by raising his complaints with the competent public prosecutor (cf. No. 21300/93, Mehiar v. Greece, Dec. 10.4.96, unpublished and No. 23916/94, Dec. 6.4.95, unpublished).

The Commission notes, in this connection, that the applicant has failed to provide any elements of proof that his allegations of ill-treatment correspond to reality (cf., a contrario, Tomasi v. France, Comm. Report 11.12.90, paras. 99-100, Eur. Court H.R., Series A no. 241, p. 52). It follows that no appearance of a violation of

Article 3 (Art. 3) of the Convention is disclosed and that this part of the application must be rejected as manifestly ill-founded under Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains under Article 7 (Art. 7) of the Convention that the refusal of the authorities to grant him a conditional release constitutes a violation of Article 7 (Art. 7) of the Convention.

The Commission notes that the applicant has now been conditionally released. As a result, he can no longer claim to be a victim of a violation within the meaning of Article 25 (Art. 25) of the Convention. Moreover, insofar as he complains about the initial rejection on 2 February 1996 of his application for conditional release, the Commission recalls that neither Article 7 (Art. 7) nor any other provision of the Convention guarantees a right to be conditionally released. It follows that this part of the application must be rejected as incompatible with the provisions of the Convention under Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains that he was refused a fee he is entitled to for having attended a computer course.

The Commission notes that there is no indication that the applicant has complained in this connection to the national authorities. It follows that, even assuming that the applicant's claim is capable of raising an issue under the Convention and/or its Protocols, the applicant has failed to exhaust domestic remedies in accordance to Article 26 (Art. 26) of the Convention. This part of the application must be, therefore, dismissed in accordance with Article 27 para. 3 (Art. 27-3) of the Convention.

4. Finally, insofar as the applicant complains that the initial refusal to grant him a conditional release constituted an interference in the exercise of the right of individual petition under Article 25 (Art. 25) of the Convention, the Commission has taken note of the reasons invoked by the national courts for refusing his conditional release on 2 February 1996. It has also taken note of the fact that the applicant has now been conditionally released. It, therefore, considers that no further action need be taken in respect of this complaint.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE;

DECIDES THAT NO FURTHER ACTION NEED BE TAKEN IN CONNECTION WITH THE ALLEGED INTERFERENCE IN THE EXERCISE OF THE APPLICANT'S RIGHT OF INDIVIDUAL PETITION UNDER ARTICLE 25 OF THE CONVENTION.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber