

COUNCIL OF EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

FINAL

DECISION OF THE COMMISSION

AS TO THE ADMISSIBILITY

of Application No. 4448/70
by the Governments of
Denmark, Norway and Sweden
against the Government of Greece

The European Commission of Human Rights sitting in private on 16th July, 1970, under the presidency of Mr. J.E.S. FAWCETT (Rules 7 and 9 of the Rules of Procedure of the Commission) and the following members being present:

MM. M. SØRENSEN
F. ERMACORA
F. CASTBERG
G. SPERDUTI
W. F. de GAAY FORTMAN
P. P. O'DONOGHUE
P. O. DELAHAYE
T. B. LINDAL
E. BUSUTTIL
B. DAVER

Mr. A. B. McNULTY, Secretary to the Commission, assisted
by MM. K. ROGGE, K. CHRYSOSTOMIDES and E. REUTER.

Having regard to:

- the application lodged on 10th April, 1970, under Article 24 of the Convention, by the Governments of Denmark, Norway and Sweden against the Government of Greece and registered on the same day under file No. 4448/70;
- the respondent Government's written observations of 17th April, 1970, on the admissibility of the application;
- the applicant Governments' observations in reply of 19th May, 1970;

./.

- the Commission's partial decision of 26th May, 1970, on the admissibility of the application, by which the Commission:
 - (1) decided that it was, and remained, competent *ratione temporis* to deal with the application, and
 - (2) invited the respondent Government to submit, within a time-limit of four weeks, its written observations in reply to the applicant Governments' submission of 19th May that the condition of exhaustion of domestic remedies does not apply to their allegations;
- the Secretary's letter of 29th May informing the respondent Government of the above decision and inviting it accordingly to submit its observations before 26th June, 1970;

Noting that no communication has been received from the respondent Government;

Having deliberated,

THE FACTS

I. Whereas the facts presented by the applicant Governments may be summarised as follows:

On 27th March, 1970, a trial of 34 persons accused of subversive activities opened before the Extraordinary Court Martial in Athens. The Court was composed of an appeal court judge, who had been appointed lieutenant-colonel for the trial, as president, and four officers of the rank of majors as members. An officer of the rank of colonel acted as prosecutor.

The defendants, who were said to have been members of the illegal organisation "Democratic Defence", were D. Karageorgas, G.A. Mangakis, I. Starakis, S. Loukas, I. Kambotiatis, D. Kotsakis, A. Wilias, A. Mihalakeas, Ch. Protopappas, I. Vassiliou, E. Deloukas, D. Konaris, N. Konstantopoulos, V. Zografou, Ch. Rokofyllos, V. Stavropoulou, C. Tsakareskos, I. Papadopoulos, C. Maniatis, G. Iordanidis, P. Kapageroff, Th. Papamangaris, Th. Pakos, P. Andritsakis, B. Papazissis, P. Papadopoulos, M. Mihopoulos, Ath. Mihalakeas, F. Missaelidou, P. Tsangarakis, G. Kosmos, Th. Matsoulas, C. Droutsas and E. Nitsopoulos.

The investigation had been opened in July 1969 after an explosion had taken place at the home of Karageorgas, who was then a Professor of the Panteios School of Advanced Economic and Political Studies. According to the indictment this explosion, which severely injured Karageorgas, took place while he was setting a time-bomb.

On the opening day of the trial, counsel for the defence read out statements by Karageorgas, Mangakis and Vassiliou alleging that these defendants had been tortured during the investigation and, on 30th March, the Court heard the evidence of Dr. Kapsaskis, Director of the Athens Forensic Medical Service, on these allegations.

Various motions by the defence, including a request for an adjournment of the trial in order to be able further to study the case-file, were dismissed by the Court.

During the subsequent proceedings a large number of witnesses, both Greek and foreign, were heard by the Court.

On 8th April, the Public Prosecutor requested the death penalty for Karageorgas and life imprisonment for Mangakis, Starakis, Loukas and Kambotiatis.

By judgment of 12th April, 1970, the Court sentenced Karageorgas to life imprisonment and Mangakis, Starakis and Loukas to 18 years' imprisonment. Kambotiatis, Kotsakis, Wilias, A. Mihalakeas, Protopappas, Vassiliou, Deloukas, Konaris, Konstantopoulos, Zografou, Rokofyllos, Stavropoulou, Tsakareskos, I. Papadopoulos, Maniatis, Iordanidis, Kapageroff, Papamangaris, Pakos, Papazissis, P. Papadopoulos, Mihopoulos and Missaelidou received prison sentences ranging from 1 year to 15 years. The execution of these sentences was suspended in the cases of Zografou, Rokofyllos, Stavropoulou, Maniatis, P. Papadopoulos, Mihopoulos and Missaelidou. Andritsakis, Ath. Mihalakeas, Tsangarikis, Kosmos, Matsoulas, Droutsas and Nitsopoulos were acquitted.

II. With regard to the above proceedings, the applicant Governments allege violations of Articles 3 and 6 of the Convention. They submit in particular:

1. As regards Article 3, that the defendants were kept in strict isolation in dark cells and that at least twelve of them were subjected to torture during the investigation. The applicant Governments refer to the above-mentioned statements by Karageorgas, Mangakis and Vassiliou and to further declarations made before the trial court by Kotsakis, Konstantopoulos and Rokofyllos. They also submit copies of statements by Loukas, Kambotiatis and Papazissis, pointing out that these defendants were not permitted to put their complaints before the court, and they invite the Commission to hear the evidence of Starakis who was sentenced to 18 years' imprisonment but subsequently pardoned and expelled from Greece.

The applicant Governments indicate that some of the said statements concerning torture were published in Athens newspapers, such as "To Vima", "Ethnos" and "Athens News", and quoted in reports of foreign observers who attended the trial. Cuttings from the "Athens News" and reports by foreign observers have been submitted to the Commission.

According to the above documents, in particular the detailed statements of nine defendants in the trial of the 34, copies of which have been filed by the applicant Governments, various methods of torture - often combined in one and the same case - were used by Greek officials during the investigation. The commonest form were severe beatings and kicking on all parts of the body, including the head and the genital organs. "Falanga" (beating of the feet with a stick or bar) was also used. Some defendants were for several days deprived of food and water and prevented from sitting or lying down. There were threats of execution and one defendant, who had been tortured, was forced, by threats concerning his wife, to declare in public that he was well treated.

The purpose of this torture was, according to the above statements, the extraction of information, including confessions, concerning the political activities and associations of the victims and other persons considered to be subversive. The officials concerned belonged to the Greek Military Police, the Athens Suburban Gendarmerie and the Athens and Piraeus Security Police (Asphalia).

2. With regard to Article 6 of the Convention, the applicant Governments allege violations of the right to a fair trial by an independent and impartial tribunal established by law. Referring to the documents submitted, they complain that:

- the defendants were not tried by an ordinary court but by an extraordinary court martial under extraordinary legislation;
- they were denied the opportunity to prepare their defence properly;
- one of the defence lawyers, Mr. G.B. Mangakis, was threatened with criminal proceedings by the president of the trial court after he had raised the question of torture on behalf of his clients;
- the court refused to hear further statements and evidence concerning the defendants' allegations of torture.

III. The applicant Governments maintain that the condition of exhaustion of domestic remedies laid down in Article 26 of the Convention does not apply to the present application, the object of which is to have determined the compatibility with the Convention of certain administrative practices and legislative measures. They submit that their allegations under Article 3 concern a practice of torture and ill-treatment of political prisoners in Greece and that their allegations under Article 6 of the Convention relate to a trial which was based on extraordinary legislation. They also state that, moreover, there are no domestic remedies available to the defendants or the applicant Governments with regard to the above complaints.

IV. The respondent Government, which was invited by the Commission to reply to the above observations of the applicant Governments concerning the condition of exhaustion of domestic remedies, has failed to make any submissions.

THE LAW

Whereas the Commission, by its partial decision of 26th May, 1970, on the admissibility of the application, decided that it was, and remained, competent *ratione temporis* to deal with the application; whereas, in the same decision, the Commission invited the respondent Government to submit its observations on a further issue of admissibility, namely the question whether the condition of exhaustion of domestic remedies applies in the present case; whereas the latter decision was taken in view of Article 26 of the Convention which provides that the Commission may deal with a case only "after all domestic remedies have been exhausted, according to the generally recognised rules of international law";

whereas the Commission, noting that no observations have been made by the respondent Government on the issue of domestic remedies, has considered whether this question should nevertheless be examined *ex officio*; whereas, in this connection, it has had regard to its previous jurisprudence and to the established purpose of the domestic remedies' rule; whereas this rule is founded on the principle that the respondent State must first have an opportunity to redress the situation complained of by its own means and within the framework of its own domestic legal system; whereas it follows that the main purpose of the rule is to protect the domestic legal system and the respondent State is best qualified to judge the expediency of availing itself of this opportunity;

whereas it is true that the Commission, when considering applications lodged by individuals under Article 25 of the Convention which have not been communicated for observations to the Government concerned, examines *ex officio* any questions arising with regard to the domestic remedies' rule; whereas, however, the situation is different where a Government, invited to submit observations on this issue, clearly waives its right to make use of this defence; whereas, in such a case, the "generally recognised rules of international law" in the matter absolve the Commission from pronouncing on the question of domestic remedies; whereas, in this respect, reference is made to the Commission's decision on the admissibility of Application No. 1994/63 (Yearbook of the European Convention on Human Rights, Vol. 7, pages 252, 260);

whereas, in the present case, the respondent Government was similarly invited to submit observations on the issue of domestic remedies but has failed to make any submissions; whereas, in the circumstances, the Commission has found it proper to consider ex officio whether the condition of exhaustion of domestic remedies applies to the applicant Governments' allegations under Articles 3 and 6 of the Convention;

whereas, with regard to their allegations under Article 3, the applicant Governments submit that these concern an administrative practice of torture and ill-treatment of political prisoners in Greece and that, consequently, they fall outside the scope of the domestic remedies' rule; whereas it is true that, according to the Commission's constant jurisprudence, the condition of exhaustion of domestic remedies does not apply where an application raises, as a general issue, the compatibility with the Convention of "legislative measures and administrative practices"; whereas, in this respect, the Commission refers to its decision on admissibility in the First Cyprus Case (Yearbook of the European Convention on Human Rights, Vol. 2, pages 182, 184) and its two decisions on admissibility in the First Greek Case (Collection of Decisions of the Commission, Vol. 25, pages 92, 114-115, and Vol. 26, pages 80, 106, 110-111);

whereas, with regard to the present complaints under Article 3 of the Convention concerning an alleged practice of torture and ill-treatment of political prisoners in Greece, the Commission observes that, in the First Greek Case, the present applicant Governments similarly alleged the existence of such a practice and cited as examples the cases of a number of individuals; whereas, in that case, the Commission, after an investigation by a Sub-Commission (Articles 28, paragraph (a), and 29, paragraph (1), of the Convention), found it "established that ... there has since April 1967 been a practice of torture and ill-treatment by the Athens Security Police, Bouboulinas Street, of persons arrested for political reasons" (Report of 5th November, 1969, Vol. II, Part 1, page 421); whereas, in respect of the cases of 17 other individuals, in which the Sub-Commission had been prevented by the respondent Government from completing its investigation, the Commission stated that the evidence before it of torture or ill-treatment having been inflicted ranged from indications and the establishment of prima facie cases to strong indications (ibidem page 422); whereas, in these 17 cases, the Greek authorities concerned were not only the Athens Security Police but also the Piraeus Security Police, the Military Police and the Central Intelligence Service; and whereas the Committee of Ministers, when dealing with the First Greek Case in its Resolution DH (70) 1 of 15th April, 1970, on the basis of the Commission's above Report, agreed with the Commission's opinion as to Article 3 of the Convention and urged the respondent Government "to abolish immediately torture and other ill-treatment of prisoners";

whereas the Commission finds that the present allegations under Article 3 of the Convention, if substantiated, must be considered as further proof of practice of torture and ill-treatment of political prisoners which, in the First Greek Case, has been found by the Commission and the Committee of Ministers to exist in Greece; whereas it follows that, in accordance with the Commission's jurisprudence, the condition of exhaustion of domestic remedies does not apply to these allegations which concern an administrative practice of the respondent Government; whereas, therefore, the allegations cannot be rejected for non-exhaustion of domestic remedies in accordance with Articles 26 and 27, paragraph (3), of the Convention;

whereas, with regard to their allegations under Article 6, the applicant Governments submit that these relate to a trial before an extraordinary court martial in Greece and to the special legislation creating such courts; further, that the Governments' object is to have determined the compatibility of this legislation with the Convention and that, consequently, the condition of exhaustion of domestic remedies again does not apply;

whereas, in this connection, the Commission has had regard to its findings under Article 6 in the First Greek Case; whereas, in that case, the Commission, referring to the functioning of the extraordinary courts martial in Greece and to the special legislation creating them, observed that these courts were not independent and that political offenders were treated on an arbitrary basis (Report of 5th November, 1969, Vol. I, Part 1, page 177); whereas, in the same case, the Commission also considered the position of the defence in trials before these courts and found that it had been prevented by the respondent Government from fully establishing the facts (*ibidem* page 178, paragraph 327);

whereas the Committee of Ministers of the Council of Europe, when dealing with the First Greek Case in its Resolution DH (70) 1 of 15th April, 1970, on the basis of the Commission's Report, agreed with the Commission's opinion as to Article 6 of the Convention and referred to certain proposals which had been made by the Commission, in accordance with Article 31, paragraph (3), of the Convention, when it transmitted its Report to the Committee; whereas, in that part of the proposals which was published by the Committee of Ministers as an appendix to the above Resolution, the Commission stated *inter alia*:

"The jurisdiction of courts martial should be limited to charges against members of the Armed Forces and charges against civilians of offences against the security of the Armed Forces, whereas the ordinary criminal tribunals should alone be competent to try other criminal charges against civilians, including all charges of offences against public order or national security. Proceedings before courts martial, as well as before ordinary criminal tribunals, should be in accordance with Article 6 of the Convention which implies that the rights of defence shall be strictly observed."

whereas the Commission finds that the present allegations under Article 6 of the Convention, together with the documentary evidence submitted, again raise the question of the special legislation in force in Greece in the field of the administration of justice; whereas it follows that, in accordance with the Commission's jurisprudence, the condition of exhaustion of domestic remedies does not apply to these allegations which concern legislative measures of the respondent Government; whereas, therefore, the allegations cannot be rejected for non-exhaustion of domestic remedies in accordance with Articles 26 and 27, paragraph (3), of the Convention;

whereas there are no other grounds for declaring the application inadmissible;

Now therefore the Commission

DECLARES THE APPLICATION ADMISSIBLE

Secretary to the Commission

Acting President of the Commission

(A. B. McNULTY)

(J. E. S. FAWCETT)