

THE SECOND GREEK CASE

Application No 4448/70

DENMARK, NORWAY and SWEDEN

against

GREECE

REPORT OF THE COMMISSION

Adopted on 4 October 1976

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REPORT

1. This Report relates to Application No 4448/70 introduced by Denmark, Norway and Sweden against Greece on 10 April 1970 under Art 24 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In the proceedings before the Commission, the Parties were represented as follows:

- Danish Government : Mr W.F. McIlquham Schmidt
(admissibility stage) and Mr F. Schön
(subsequent proceedings);
- Norwegian Government : Mr J. Evensen (admissibility stage)
and Miss K. Ohm (subsequent proceedings);
- Swedish Government : Mr J. af Sillén (admissibility stage)
and Mr A. Fälthelm (subsequent proceedings);
- Greek Government : Mr C. Panayotacos (admissibility
stage) and Mr N. Kambalouris
(subsequent proceedings).

2. The application concerns a criminal investigation in 1969/70 and the subsequent trial before the Extraordinary Court Martial in Athens, in March and April 1970, of thirty-four persons accused of subversive activities. The Public Prosecutor had requested the death penalty for the principal defendant and the Court was expected to give its judgment on 11 or 12 April. The applicant Governments alleged violations of Arts 5 and 6 of the Convention.

On 11 April 1970 the Acting President of the Commission gave notice of the application to the respondent Government and invited their observations on the admissibility. He also requested the Government, pending the proceedings before the Commission, to suspend execution of any death sentence which might be pronounced.

On 12 April the court martial passed varying sentences of imprisonment on all the accused except seven who were acquitted. No death sentence was pronounced.

3. In its partial decision of 26 May 1970 on the admissibility of the application, the Commission, having regard to the respondent Government's observations of 17 April and the applicant Governments' reply of 19 May 1970, found:

- that, following her denunciation under Art 65 (1), Greece would cease to be a Party to the Convention on 13 June 1970; but
- that, in accordance with para(2) of Art 65, she would remain bound by the Convention in respect of any act which, being capable of constituting a violation of the Convention, might have been performed by Greek authorities before that date.

The Commission concluded that it was, and remained, competent *ratione temporis* to deal with the application.

The full text of this decision is reproduced at Appendix I to this Report.

4. In its final decision of 16 July 1970 on the admissibility of the application, the Commission examined the question arising under Art 26 of the Convention concerning the exhaustion of domestic remedies. It found:

- that the applicant Governments' allegations under Art 3 of the Convention would, if substantiated, constitute further proof of an administrative practice of torture and ill-treatment of political prisoners which, in the First Greek Case, had been found by the Commission and the Committee of Ministers to exist in Greece;
- that the allegations made, and the documentary evidence submitted, under Art 6 of the Convention again raised the question of the special legislation in force in Greece in the field of the administration of justice; and
- that, for these reasons, and in accordance with the Commission's constant jurisprudence, the condition of exhaustion of domestic remedies did not apply to the allegations.

The Commission consequently admitted the application.

The full text of the Commission's decision is reproduced at Appendix II to this Report.

5. In its interim Report of 5 October 1970 to the Committee of Ministers of the Council of Europe (1) the Commission concluded that it could not, in the special and unprecedented situation

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(1) "Report of the Commission on the Present State of the Proceedings" (not published).

existing at that time as described in the Report, "adequately continue its functions in this case with a view to the eventual adoption of a Report under Art 30 or 31 of the Convention".

The Committee of Ministers decided in March 1971 to take note of this Report.

6. On 28 November 1974 Greece rejoined the Council of Europe and became again a Contracting Party to the Convention.

The Commission resumed its consideration of the application on 13 December 1974 and decided on 21 March 1975:

- to invite the applicant Governments, and subsequently the respondent Government, to state their positions as regards the course of future proceedings in this case;
- to recall in this connection that, under Art 28 (b) of the Convention, it was at the Parties' disposal with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in the Convention;
- when inviting the respondent Government to state their position, also to request information concerning remedies now open in Greece for victims of persecution under the former regime.

7. The applicant Governments, in their observations of 2/5 May 1975, pointed out that "the human rights of a number of persons were involved" in the present case. The Governments presumed that these persons were "no longer detained or imprisoned on the basis of the verdict of a court martial" and, on this assumption, they considered that the case "should be closed by the Commission".

8. The Commission decided on 26 May 1975 that the respondent Government should be invited to provide, in their observations in reply, information concerning:

- the release, or continued detention, of the persons referred to in the application; and
- any remedies now open in Greece to persons claiming to have been victims of political persecution under the former regime. In this respect, the Commission also had regard to Art 5 (5) of the Convention.

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9. The respondent Government, in their observations of 25 September 1975, stated that:

- all political prisoners in Greece had been released on 26 and 27 July 1974;
- persons who had been subjected to torture under the dictatorship were entitled to bring criminal proceedings against the torturers; criminal proceedings against torturers were pending;
- convictions for acts directed against the dictatorship were not entered in the criminal record;
- victims of the dictatorship were under the existing legislation in certain cases entitled to claim compensation.

The Government also submitted the Greek texts of the relevant legal provisions.

In their supplementary observations of 5 March 1976, the respondent Government further stated that:

- persons removed from their posts under the dictatorship had been reinstated;
- others among those persecuted, who had played a leading part in the resistance, participated after the liberation in the first Government of national unity, were appointed Prefects, etc.

The Government considered that, "by the reinstatement of those persecuted during the period of dictatorship on the one hand and by the condemnation of the guilty ones on the other, Democratic Greece has offered full satisfaction to the oppressed Greek people and particularly to those who had been in various ways harrassed during those times."

The Government expressed the hope that, in the light of this information, the case would be closed by the Commission.

Under cover of a letter of 5 May 1976 the Government submitted:

- a French translation of the Greek Constitution of 1975;
- English translations of Arts 239, 308-311, 325 and 326 of the Penal Code;
- an English translation of Art 6 of Decree D/1975;
- English translations of Art 914 of the Civil Code and of Art 105 of the Introductory Act to that Code.

10. The Commission continued its examination of the application in the light of the above submissions on 14 July 1976. It noted the Parties' concordant requests that the proceedings should be closed and found that:

- the English texts of the relevant provisions of Greek law, submitted by the respondent Government, were sufficient to show that remedies were open in Greece to persons claiming to have been victims of political persecution under the former regime and that these remedies also provided for compensation;
- there were no reasons of a general character affecting the observance of the Convention which justified further examination of the application.

The Commission, acting under Rules 49 and 45 (1)(b) of its Rules of Procedure, consequently decided to accede to the Parties' concordant requests, to close the proceedings in this case and to strike the application off its list. The following members participated in this decision:

MM. J.E.S. FAWCETT, President
G. SPERDUTI, First Vice-President
E. BUSUTTI
L. KELLBERG
B. DAVER
K. MANGAN
J. CUSTERS
C.H.F. POLAK
J.A. FROWEIN
R.J. DUPUY
G. TENEKIDES.

11. The present Report has been drawn up under Rule 54 of the Commission's Rules of Procedure and in accordance with the Commission's practice in similar admitted cases (cf Applications Nos 299/56 - Greece v. the United Kingdom; 2294/64 - Gericke v. the Federal Republic of Germany; 2690/65 - Televizier v. the Netherlands; and 4753/71 - Karnell and Hardt v. Sweden). It will, in accordance with Rule 54 (2), be communicated to the Committee of Ministers and to the Parties and be made available for publication.

Secretary to the Commission

President of the Commission

(H.-C. KRÜGER)

(J.E.S. FAWCETT)