

APPLICATION/REQUÊTE N° 13208/87

Aristotelis KALENTZIS v/GREECE

Aristotelis KALENTZIS c/GRECE

DECISION of 8 January 1991 on the admissibility of the application

DÉCISION du 8 janvier 1991 sur la recevabilité de la requête

Article 26 of the Convention · *Prohibition on a prisoner (Greece) possessing a copy of a book of which he is the author In order to exhaust domestic remedies, the person concerned must appeal to the Council of State against the decision of the Minister of Justice confirming the prohibition.*

With regard to the interception of a complaint about this prohibition, the person concerned must appeal to the public prosecutor at the court of first instance in order to exhaust domestic remedies

Examination of the question whether, because of the circumstances of the applicant's detention, he was in this case absolved from the obligation to exhaust domestic remedies.

(TRANSLATION)

THE FACTS

The facts of the case as submitted by the parties may be summarised as follows

The applicant is a Greek national born in 1952. He served a 12-year prison sentence from 1977 to 1989 for terrorist activities (causing explosions and possession of explosives) At the time when the application was introduced he was being held in the Korydallos prison in Piraeus. Having been granted a conditional release, he is now resident in Athens, where he works as a journalist and writer.

In 1980 the applicant published a book entitled "Democracy 1980 ... Prison!", in which he related his experiences during his first few years of imprisonment The book has not been banned or seized.

In April 1987 the director of Korydallos prison, where the applicant was then being held, orally forbade him to be in possession of a copy of his book in prison. According to Article 90 para. 4 *in fine* of the Greek Prison Code, "the prison director may prohibit the possession of magazines or other publications whose content is indecent or a danger to security and order"

The applicant contends that on 9 April 1987 he wrote to the prosecutor at the Piraeus court of first instance, the prosecutor at the Court of Cassation (Areios Pagos) and the Minister of Justice. He states that he requested the return

of his book and declared that he would otherwise file a complaint and claim damages against the authors of the prohibition, which he considered arbitrary. The applicant claims that the letter was placed in the postbox provided for prisoners' official communications. According to Article 4 para 5 of the Prison Code: "Prisoners shall have a free, untrammelled right of appeal to the Ministry of Justice, the judicial authorities and the prison authorities supervising the prison administration. The prison administration must transmit without delay any report or letter addressed by a prisoner to the aforementioned authorities, without reading its contents". Article 81 of the same Code, which provides for restrictions on prisoners' correspondence, recalls that correspondence with judicial and prison authorities must not be subject to controls of any kind by the prison administration. However, all official correspondence between prisoners and judicial or administrative authorities necessitates the intervention of the prison administration to the extent that the director sends the communications with a covering letter. There is no trace of the applicant's complaint in the official register of prisoners' correspondence kept at Korydallos prison.

The applicant states that in May 1987 he asked the prison administration to notify him of the date and registration number of his complaint. His request remained unanswered. The applicant was subsequently informed by his lawyer that his letters had not reached their addressees.

The applicant wrote to the Commission on 14 July 1987. He complained of the prohibition on having his own book in prison and stated that he had to correspond with the Commission secretly since the prison authorities refused to forward his letters.

The applicant produced a carbon copy of his complaint of 9 April 1987.

In a letter of 4 August 1987 the Secretary to the Commission informed the Agent for the Greek Government of the applicant's allegations concerning the forwarding of his correspondence to the Commission, and asked him kindly to ensure that the correspondence between the prisoner and the Commission proceeded unhindered.

In a letter of 8 September 1987 the applicant informed the Secretary to the Commission that the prison authorities had permitted him to contact him. Furthermore, the Agent for the Greek Government reported in December 1987 that inquiries had shown that communication between prisoners in Greece and the Commission had never been impeded.

On 7 September 1987 the applicant applied to the judge in chambers at the Piraeus court of first instance for a conditional release. He subsequently asked the

court to acknowledge receipt of his application. In a letter of 28 September 1987 the prosecutor at the Piraeus court of first instance informed the applicant that he had not received his application. The application was in fact transmitted to the judge in chambers at the Piraeus court of first instance on 5 November 1987. It was rejected under Order No. 712/88 of the court.

The Commission received a photocopy of the applicant's application for conditional release. In this document the applicant set forth the facts leading up to his conviction and imprisonment. The first page stated that copies of the application had been sent to 17 other addressees. The last page stated that the book "Democracy '80 ... Prison!" was appended.

The applicant subsequently explained that his various writings had been reproduced outside the prison. His relatives and lawyer arranged for them to be reproduced and sent to their addressees. He said that this was what had happened with the book in question, since he was not in possession of a copy and so could not enclose it with his letters.

On 4 February 1988 the Korydallos prison administration sent the Ministry of Justice a copy of the applicant's book entitled "Democracy '80 ... Prison!", together with another book written by the applicant entitled "Justice in Present-Day Greece", asking whether they might appropriately be returned to the applicant.

On 11 February 1988 the Ministry replied that in view of the insulting content of the books they should not be returned to the applicant. The applicant was informed of this reply on 25 February 1988.

In 1989 the applicant was conditionally released under Order No. 319/89 by the judge in chambers at the Piraeus court of first instance.

COMPLAINTS (Extract)

1. The applicant complains that he was prohibited from having a copy of his book in prison. He contends that this prohibition violates his right to respect for his private life and to freedom of expression, and relies on Articles 8 and 10 of the Convention. The applicant also complains of the alleged interception of his complaint of 9 April 1987 concerning the aforementioned prohibition. He contends that his right to respect for his correspondence and his right to an effective remedy before a national authority were thus violated. He relies on Articles 8 and 13 of the Convention.

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THE LAW (Extract)

1. The applicant first of all complains that he was forbidden to have a copy of his book in prison and that his complaint of 9 April 1987 was intercepted. He relies on Articles 8, 10, and 13 of the Convention.

In connection with the prohibition on possession of the said book, the Government contend that the applicant did not exhaust the domestic remedies. They note that the applicant could have appealed to the Ministry of Justice against the prison director's decision. This remedy is expressly set forth in Article 4 para 5 of the Prison Code. The applicant could further have appealed against the decision given by the Minister of Justice in the instant case. The Government stress that an action could have been brought before the Council of State to set aside the decision. The applicant, having been informed of the Minister's decision on 25 February 1988, failed to avail himself of this remedy.

The Government also contend that the said prohibition is not in breach of the Convention. The interference with the applicant's right to respect for his private life is justified under Article 8 para. 2 of the Convention, since it is both laid down in Article 90 para. 4 of the Prison Code and necessary in a democratic society in the interests of public safety, the prevention of disorder and crime and the protection of the rights and freedoms of others.

In connection with the alleged interception of the applicant's complaint of 9 April 1987, the Government observe that Article 10 of the Greek Constitution secures the right of all individuals to address themselves to the State authorities. In the case of prisoners, Article 4 para. 5 of the Prison Code expressly lays down such a right. In practice, any prisoner who does not wish to use the post-box provided specifically for correspondence is at liberty to go to the prison office and register any complaint or grievance against the administrative or judicial authorities. In such cases the prisoner receives a certificate of registration. Furthermore, any prisoner may apply to the public prosecutor at the court of first instance who, under Article 572 of the Code of Criminal Procedure and the relevant Ministry of Justice circulars, visits the prisons for which he is responsible at the very least once a month. The Government add that between April and December 1987 the competent prosecutor regularly visited Korydallos prison. They also observe that the applicant was in contact with his lawyer, who could have supplied him with any relevant information on the remedies available to him. Moreover, he had followed this procedure on several previous occasions, so that the failure to do so in this particular case seemed deliberate and unjustified.

The Government contend that under these circumstances the applicant failed to use the remedies available to him under Greek law to challenge not only the

prohibition on possession of his book but also the alleged interception of his mail. The Government also contend that the applicant provides no evidence whatever that he sent the complaint of 9 April 1987. Similar complaints from the applicant had already been dealt with, particularly in 1982. The Government therefore contend that there was no reason why the complaint of 9 April 1987 should not have been registered. They conclude that the present complaint is completely ill-founded.

The applicant accepts that the remedies mentioned by the Government were theoretically available to him. He states, however, that in view of the blackmail to which he claims to have been subjected by the prison wardens, such remedies were illusory. He contends that he was forced on several occasions to correspond secretly with various authorities and that his contact with his lawyer was kept under constant surveillance.

The Commission recalls that Article 26 of the Convention provides that: "The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ...".

It observes that in the present case the applicant did not appeal to the competent administrative and judicial authorities, pursuant to national law, to establish the alleged violations and remedy the situation complained of. In connection with the prohibition on possession of a copy of his book in prison, the applicant did not seek to appeal against the decision of the Minister of Justice confirming the said prohibition. Nor did he in any way seek to appeal against the alleged interception of his complaint of 9 April 1987, whereas he was at liberty to do so by applying to the public prosecutor at the Piraeus court of first instance.

The Commission notes that the applicant does not deny that these remedies were available to him but contends that they were illusory in the particular circumstances of detention to which he was subjected.

The Commission is not convinced by these arguments. An appeal to the Council of State against a prohibition on possession of one's own book in prison cannot be regarded as lacking any chance of success. The same applies to the appeal which the applicant could have filed with the public prosecutor at the Piraeus court of first instance against the alleged interception of his complaint.

The Commission has also considered whether the particular circumstances of the applicant's detention constituted a ground exempting him from the obligation to exhaust the available remedies. In view of the contacts which the applicant had

with his relatives and his lawyer, the possibility of contacting the competent prosecutor and, lastly, the possibility of officially lodging complaints with the prison office, the Commission does not consider that the applicant was held in such conditions of isolation as to exempt him from the obligation of exhausting the remedies available to him.

It follows that the applicant did not exhaust the domestic remedies according to the generally recognised rules of international law, and this part of the application must therefore be rejected in accordance with Article 27 para. 3 of the Convention.

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