

APPLICATION/REQUÊTE N° 14986/89

Petronella van KUIJK v/GREECE

Petronella van KUIJK c/ GRÈCE

DECISION of 3 July 1991 on the admissibility of the application

DÉCISION du 3 juillet 1991 sur la recevabilité de la requête

Article 26 of the Convention :

- a) *Exhaustion of domestic remedies. Ratio legis of the rule.*
- b) *The obligation to exhaust domestic remedies requires normal use of remedies which are effective, sufficient and available. To be effective, a remedy must be capable of remedying directly the situation complained of. Remedies brought to the attention of a foreign detainee, without legal representation, in a language which she does not understand, considered not to be accessible.*

With regard to ill-treatment in prison, the steps which the detainee could have taken to obtain a transfer to another prison are not a remedy which has to be exhausted.

- c) *With regard to ill-treatment in prison, an action for damages based on Article 105 of the law implementing the Civil Code (Greece) is not an effective remedy.*

Summary of the relevant facts

The applicant, a Dutch national born in 1958, is represented by Mr M Moszkowicz, a lawyer practising in Maastricht (Netherlands), and Mr Ch Alvanos, a lawyer practising in Thessaloniki (Greece)

In December 1986 the applicant travelled to Greece with the intention of settling there. She applied for a residence permit and a work permit. She then returned to the Netherlands and obtained a change of residence certificate from the Greek consular authorities. In March 1987 she travelled to Greece, importing various items for which she obtained a provisional import licence covering a period of three months, after which she would have to re-export the goods or pay duty on them. The applicant also obtained a provisional residence permit.

In January 1988 the customs authorities served on the applicant a notice to pay import duty. The applicant appealed against this notice to the Thessaloniki Administrative Court. In February 1988 the customs authorities issued a warrant for the applicant's arrest, which could not be enforced because she had returned to the Netherlands. In August 1988 the applicant obtained a residence permit.

On 27 September 1988 the applicant was arrested by the customs authorities. On the same day the authorities issued a second notice to pay, demanding 294,980 GRD, together with a second arrest warrant in connection with the above debt. On 30 September 1988 the Dutch consul informed the applicant that a lawyer would get in touch with her. On 7 October 1988 the applicant was transferred to Eptapyrgio prison in Thessaloniki. She was contacted on 9 October 1988 by Mr. Alvanos, her lawyer. The applicant appealed against the second notice to pay and requested her release. This appeal was dismissed on 22 February 1989 by the Administrative Court.

(TRANSLATION)

THE FACTS (Extract)

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The applicant was released on 17 May 1989 after the sum she had been ordered to pay was paid by the Orthodox Church in the Netherlands. She has described the conditions of her detention at Eptapyrgio prison as follows.

The applicant was detained in the only cell in the prison for female prisoners. This was 15 metres long and 6 metres wide. It had three windows. It was equipped with toilets and a shower without a door, also used as a laundry room ; hot water was available for one hour every day. Each prisoner had a bed with sheets and blankets and a box for her personal effects. The cell also had a fireplace and a table with six chairs.

The cell was occupied by from ten to eighteen prisoners and, from time to time, by three or four young children. Some of the prisoners had been sentenced to long terms of imprisonment; in addition to prostitutes and drug addicts there were mentally disturbed prisoners. Theft among the prisoners was frequent. In addition, the cell was insanitary.

The prisoners were allowed out of their cell between 8 a.m. and 12 noon and between 3 p.m. and 7 p.m. They were authorised to take walks in a yard 15 metres long and from 2 to 5 metres wide enclosed by a 4 metre high wall.

The applicant was not permitted to work because she was not serving a sentence. In the absence of any form of income she allegedly had to depend on the goodwill of the other prisoners on several occasions to keep herself supplied with paper, soap, cigarettes and toilet paper.

In general the prisoners bought articles they needed at the prison shop, where they handed in their orders once a week. If their order was lost, which happened frequently according to the applicant, they had to wait until the following week.

Medical treatment was dispensed by the prison psychiatrist, who decided whether a prisoner should be examined or treated by another doctor. Drug addicts were not given treatment, and the other prisoners had to look after them as best they could.

The prison officers showed no hostility to the inmates but rather indifference. They rarely intervened when personal relations problems arose between prisoners.

Visits took place in the yard, where the prisoners had to stand in front of a 2.5 metre wide opening in the wall. The prisoners were separated from their visitors by a perforated metal sheet. Visits lasted between 15 and 20 minutes. All the prisoners received their visitors at the same time. About fifteen prisoners and about the same number of visitors used to gather on the two sides of the opening. In practice it was difficult for prisoners to see their visitors and converse with them. Visits took place three times a week. The applicant was visited seven times by her parents during a nine day period in May 1989. She was not allowed to meet them in a separate room.

The prisoners could make a two-minute telephone call once a month. They could not receive telephone calls. In April 1989, when the applicant was showing signs of mental disturbance, she was permitted to receive two calls from her parents. Postal contact was also difficult. There were serious delays in the delivery of mail, particularly from and to foreign countries.

The applicant has produced a letter from the Eindhoven social services department dated 8 March 1990 stating that she showed signs of psychiatric problems due to her imprisonment.

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THE LAW (Extract)

1. The applicant complains of the conditions of her detention in Eptapyrgio prison. She maintains that she was subjected to inhuman and degrading treatment prohibited by Article 3 of the Convention, which provides as follows :

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

The respondent Government maintain that the applicant has not exhausted domestic remedies. Greek legislation requires persons imprisoned for debt to be detained separately from prisoners convicted of a criminal offence. The Government refer in this connection to Article 6 para. 7 of the Prison Code (Σωφρονιστικός Κώδιξ) and Article 1050 para. 2 (b) of the Code of Civil Procedure (Κώδιξ πολιτικής δικονομίας). Moreover, according to the Prison Code, persons imprisoned for debt are entitled to receive unrestricted daily visits (Article 84). The Government maintain that the applicant's complaint mainly concerns violations of the above provisions. Consequently, she could have requested her transfer from Eptapyrgio prison to a prison where separate detention was possible ; she could have complained of a breach of the Prison Code to the governor and the Minister of Justice, under Article 4 para. 5 of the Prison Code ; she could have applied to the public prosecutor attached to the Thessaloniki Court of First Instance, who, under Article 25 of Law No. 1756/1988, is responsible for dealing with complaints about the conditions of detention inter alia ; lastly, in so far as an authority had allegedly infringed her rights, she could have brought a civil action for damages under Article 105 of the law implementing the Civil Code (Εισαγωγικός νόμος Αστικού Κώδικα) – and still can if she considers that she has a valid claim.

With regard to the merits of this complaint, the Government observe that the applicant's problems, namely the lack of any possibility of work in prison, disturbance by other prisoners, particularly drug addicts and hysterics, and the lack of conversation, were linked to the fact that she was not separately detained and the fact that she had an insufficient command of Greek.

The Government assert that the applicant did not complain to the competent authorities about the conditions of her detention or her problems with the other prisoners. She therefore made no attempt whatsoever to improve her position. In any event, the situation the applicant has complained of, which was the inevitable consequence of her detention in an old, overcrowded prison, did not reach the level of severity of “inhuman or degrading treatment” within the meaning of Article 3 of the Convention. Lastly, with regard to deficiencies in the provision of medical treatment, the Government observe that the applicant does not even maintain that she did not receive appropriate medical treatment.

The Government accordingly argue that this part of the application must be rejected either for failure to exhaust domestic remedies or as being manifestly ill-founded.

The applicant maintains that she complained to the governor several times and observes that she appealed against enforcement of the arrest warrants against her. She considers that, in the particular circumstances in which she found herself, i.e. her isolation from her family and friends and the difficulty for her of approaching and communicating with the prison management, no other remedies could be held to be effectively accessible to her. She further observes that it was for the State authorities to ensure that the facilities prescribed by Greek law for prisoners in her situation were provided and that the conditions of her detention were not incompatible with the Convention. Lastly, the applicant asserts that she suffered serious mental trauma and is still receiving medical treatment.

The Commission has first examined the objection on the ground of non-exhaustion of domestic remedies raised by the Government. It recalls that the basis of the exhaustion of domestic remedies rule is that before proceedings are brought in an international court the State responsible must have had an opportunity of redressing the alleged damage by domestic means (No. 5964/72, Dec. 29.9.75, D.R. 3 p. 57). Nevertheless, the obligation to exhaust domestic remedies requires only that an applicant make normal use of remedies likely to be effective and adequate (Nos. 5577-5583/72, Dec. 15.12.75, D.R. 4 p. 4). The relevant remedies for this purpose are those which are firstly, accessible to the applicant, and secondly capable of remedying the situation the latter has complained of.

In this case the Commission observes, firstly, that information about the various possible steps and remedies proposed by the Government was given to the applicant only in Greek. Having regard to her status as a foreigner and the fact that she had no contacts with a lawyer until several days after her arrest, doubts about the accessibility of the above remedies in this specific case are legitimate.

Furthermore, the Commission notes that the steps the applicant might have taken to secure her transfer to another prison cannot be regarded as "remedies within the meaning of Article 26 of the Convention. Although these might have led to an improvement in the conditions of her detention, they would by no means have enabled her to assert her rights under the Convention, and in particular to raise her complaint under Article 3. Consequently, the Commission considers that these steps cannot be taken into account for the purpose of deciding whether domestic remedies have been exhausted as required.

With regard to the action for damages that the applicant could have brought – and could still bring – on the basis of Article 105 of the law implementing the Civil Code, the Commission makes the following observations:

Through such an action the applicant could seek a ruling that certain provisions of the Prison Code concerning the special rights of persons imprisoned for

debt were breached in her case and request compensation on that basis. The object of such an action would therefore be neither a finding that the applicant's right under Article 3 of the Convention had been violated nor a finding that there had been ill-treatment prohibited by national legislation. The sole object would be a finding that domestic law had been contravened not through the ill-treatment alleged by the applicant but by the refusal to afford her the special treatment to which she was *entitled under national law as a person imprisoned for debt*. Moreover, any compensation she might receive would cover only damage resulting from the fact that she was not afforded such treatment, not damage related to her allegation that the conditions of her detention in Eptapyrgio prison amounted to ill-treatment.

It follows that such a remedy is not effective, according to the generally recognised rules of international law, and that the Government's objection must be rejected.

With regard to the merits of the complaint, the Commission notes that this part of the application raises complex factual and legal issues which require an examination of the merits. It cannot be regarded as manifestly ill-founded and must therefore be declared admissible, no other grounds for a finding of inadmissibility having been noted.

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