

Tribunal Europeo de Derechos Humanos

TEDH (Sección 3ª) Caso Dougoz contra Grecia. Sentencia de 6 marzo 2001

TEDH\2001\213



PROHIBICION DE LA TORTURA: Ambito: Detención previa a la deportación que teniendo en cuenta su duración y condiciones suponen un trato degradante contrario al art. 3 del Convenio: violación existente.

DERECHO A LA LIBERTAD PERSONAL Y A LA SEGURIDAD: Detención preventiva: control de legalidad: Incumplimiento de los requisitos mínimos de legalidad establecidos en el art. 5.1 del Convenio: no se puede considerar criterio de calidad suficiente la opinión del Fiscal: violación existente; Recursos: ausencia de recurso ante un órgano judicial que pueda pronunciarse sobre la legalidad de la detención: ordenamiento nacional que no se ajusta a la exigencia del art. 5.4 del Convenio: violación existente.

Jurisdicción: Protección Europea de Derechos Humanos

Demanda 40907/1998

Demanda de ciudadano sirio contra la República de Grecia presentada ante la Comisión el 24-04-1998 por considerarse víctima de torturas y tratos inhumanos y degradantes durante el período de detención previo a su deportación, así como de haber sido privado ilegítimamente de su libertad y de no disponer de recurso alguno contra su detención. Violación de los arts. 3, 5.1, y 5.4 del Convenio: existencia. **Estimación de la demanda** .

In the case of Dougoz v. Greece,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr J.-P. Costa, President,

Mr C. L. Rozakis,

Mr L. Loucaides,

Mr P. Kuris,
Mrs F. Tulkens,
Mr K. Jungwiert,
Sir Nicolas Bratza, judges,
and Mrs S. Dollé, Section Registrar,

Having deliberated in private on 8 February 2000 and 13 February 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1

The case originated in an application (no. 40907/1998) against Greece lodged with the European Commission of Human Rights («the Commission») under former Article 25 of the [Convention for the Protection of Human Rights and Fundamental Freedoms \(RCL 1979, 2421 y ApNDL 3627\)](#) («the Convention») by a Syrian national, Mr Mohamed Dougoz («the applicant»), on 24 April 1998.

2

The applicant was represented by Mrs I. Kourtovik, a lawyer practising in Athens. The Greek Government («the Government») were represented by the Delegate of their Agent, Mr M. Apeossos, Senior Adviser at the State Legal Council, and Mrs K. Gregoriou, Adviser at the State Legal Council.

3

The applicant alleged, in particular, that his conditions of detention whilst awaiting his expulsion amounted to inhuman and degrading treatment, and complained about the lawfulness and length of his detention and the lack of remedies under domestic law in this connection.

4

On 24 April 1998 the President of the Commission had given an indication under former Rule 36 of the Commission's Rules of Procedure. On 10 July 1998 the Commission decided not to renew this indication.

5

The application was transmitted to the Court on 1 November 1998, when [Protocol No. 11 \(RCL 1998, 1562 y 2300\)](#) to the Convention came into force (Article 5 § 2 of Protocol No. 11). 6. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the [Convention \(RCL 1999, 1190 y 1572\)](#)) was constituted as provided in Rule 26 § 1 of the Rules of Court.

7

By a decision of 8 February 2000, the Chamber declared the application partly admissible.

THE FACTS

I

The circumstances of the case

8

The applicant claims that, while in Syria, he was accused of national security offences, namely having leaked information during his military service. The applicant left that country. He claims that he was subsequently found guilty of these offences and sentenced to death.

9

The Government claim that the applicant entered Greece surreptitiously, probably in July 1983. The applicant claims that he entered Greece lawfully.

10

In 1987 the applicant was arrested by the Greek authorities for drug-related offences. In 1988 he was found guilty by the three-member Court of Appeal of Athens, sitting as a first instance court. The court, considering that the applicant was himself a drug-user, sentenced him to two years' imprisonment. The applicant's conviction was upheld by the five-member Court of Appeal of Athens in 1989.

11

In 1989 the applicant applied for refugee status to the Athens Office of the United Nations High Commissioner for Refugees (UNHCR) and was recognised as a refugee under the UNHCR mandate. On that occasion, he was issued by the Greek authorities with an alien's residence card.

12

According to the respondent Government, his leave to remain in Greece expired on 8 January 1991. However, he remained illegally.

13

In the course of 1991, the applicant was arrested for theft and bearing arms without authorisation. He was placed in detention on remand. In 1993 he was found guilty of these offences by the Nafplio Court of Appeal, composed of judges and jurors, and was sentenced to five and a half years' imprisonment.

14

On 6 June 1994 the applicant was released on licence. On the same day, the Chief of Police ordered his expulsion from Greece in the public interest.

15

On 23 June 1994 the applicant applied to the Greek authorities for refugee status. On 4 August 1994 the Minister of Public Order rejected his application, which was found to be abusive because «it had been submitted ten years after the arrival of the applicant in Greece obviously with the aim of avoiding his lawful expulsion after his release from prison where he had served long sentences for very serious crimes».

16

The Government claim that, following this decision, the applicant requested to be expelled to «the Former Federal Republic of Yugoslavia», and on 19 September 1994 he was sent to that country, but thereafter he returned to Greece illegally. However, the applicant claims that he was never «lawfully expelled» to «the Former Yugoslav Republic of Macedonia». He neither asked to go to there, nor was he accepted by that country.

17

On 9 July 1995 the applicant was arrested in Greece for drug-related offences. On 26 November 1996 he was found guilty and sentenced to three years' imprisonment and a fine by the three-member Court of Appeal of Athens. In 1998 the five-member Court of Appeal of Athens upheld his conviction and sentence.

18

On 25 June 1997 the applicant asked for his release on licence claiming, «inter alia», that he could return to Syria because he had been granted a reprieve. The indictments chamber of the first instance criminal court of Piraeus examined the applicant's request in camera on 16 July 1997. Although the applicant was not allowed to attend the hearing, the prosecutor was present and was heard. The court decided that the applicant should be released on licence and expelled from Greece. It considered that the applicant's conduct during his detention indicated that he was not going to commit any further offences once released and that it was not necessary to prolong the detention.

19

Following this decision, the applicant was released from prison on 10 July 1997 and he was placed in police detention pending his expulsion, on the basis of an opinion given by the Deputy Public Prosecutor of the Court of Cassation that decision No. 4803/13/7A/18-26.6.92 applied by analogy in cases of expulsion ordered by courts (see paragraph 39 below), Initially the applicant was detained in a detention centre in Drapetsona. He was issued with a temporary passport by the Greek authorities and on 12 September 1997 was given leave to enter Syria by the Syrian Embassy in Athens.

20

The applicant claims that the Drapetsona detention centre consisted of 20 cells. At times there were up to 100 people detained there. The applicant's cell was overcrowded. There would be «tenfold persons» in his cell depending on the detainee population each night. There were no beds and the detainees were not given any mattresses, sheets or blankets.

Some detainees had to sleep in the corridor. The cells were dirty and the sanitary facilities insufficient, since they were supposed to cater for a much smaller number of persons. Hot water was scarce. For long periods of time there would not be any. There was no fresh air or natural daylight and no yard in which to exercise. The only area where the detainees could take a walk was the corridor leading to the toilets.

21

According to the applicant, there was no entertainment or other activities in Drapetsona detention centre. The applicant could not even read a book because his cell was so overcrowded. Detainees were served with a «passable plate of food» twice a day. No milk was ever provided while fruit, vegetables and cheese appeared rarely on the menu. Moreover, the detainees could not obtain any food from outside. The applicant had no access to a doctor or a chemist. Only family visits were allowed and, as a result, foreign detainees did not receive any visits at all. The applicant could not address himself to the social services or the public prosecutor. Although payphones existed, their number was clearly insufficient. Cases of ill-treatment by the guards were not uncommon.

22

The Government claim that hot water was available on a 24-hour basis in the Drapetsona detention centre. The food served to detainees was sufficient and of a very high quality. The police officers had the same menu. There was adequate natural light where the applicant was detained. The applicant was able freely to circulate in a wide corridor at regular intervals during the day. The detention area was cleaned every day by the staff of the centre and was regularly disinfected. There was medical care.

23

In the autumn of 1997 there was a hunger strike at the Drapetsona detention centre.

24

On 28 November 1997 the applicant asked the Minister of Public Order to allow him to travel to a country other than Syria where he allegedly faced the death penalty.

25

On 2 February 1998 the applicant applied for the order for his expulsion to be lifted invoking, «inter alia», the European [Convention for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment \(RCL 1989, 1496\)](#) and the fact that he had been recognised as a refugee by the UNHCR. He also claimed that his continued detention contravened Article 5 of the [Convention \(RCL 1979, 2421 y ApNDL 3627\)](#) and that the expulsion order had been made in breach of national law.

26

In March 1998 there were 40 to 50 people detained at the Drapetsona centre.

27

In April 1998 the applicant was transferred to the Police Headquarters in Alexandras

Avenue. According to the applicant, the conditions were similar to those in Drapetsona, although there was natural light and air in the cells and adequate hot water. The Government describe the conditions in Alexandras as being the same as in Drapetsona.

28

On 28 April 1998 the UNHCR Representative in Athens requested the Ministry of Public Order not to expel the applicant to Syria as long as his case was under review.

29

On 11 May 1998 the indictments chamber of the first instance criminal court of Piraeus, sitting in camera, refused to lift the expulsion order recalling, «inter alia», that in his application of 25 June 1997 the applicant had claimed that he was no longer subject to persecution in Syria. The decision of the court did not contain any express ruling on the applicant's claim concerning his detention.

30

On 26 and 28 July 1998 the applicant requested the Ministers of Justice and Public Order to lift the expulsion order and, in any event, to release him.

31

On 3 December 1998 the applicant was expelled to Syria. The Greek Government claim that they had been informed by INTERPOL that Syria had not asked for his extradition.

32

The applicant claims that, upon his arrival in Syria, he was placed in detention.

II

Relevant domestic law and practice

33

Article 74 § 1 of the Criminal Code provides as follows:

«The court may order the expulsion of an alien who has been given a prison sentence under Articles 52 and 53 of the Criminal Code, provided that the country's international obligations are respected. An alien lawfully present in Greece may only be expelled if given a sentence of at least three months' imprisonment. The expulsion takes place immediately after the alien has served his or her sentence or is released from prison. The same applies when the expulsion has been ordered by way of a secondary penalty».

34

Article 105 of the Criminal Code provides for the release of prisoners on licence.

35

Article 106 of the same Code provides that the court may impose on the person released on

licence certain obligations concerning, «inter alia», his place of residence.

36

On 15 January 1981 the Public Prosecutor of the Court of Cassation opined that, although persons released on licence may not leave the country, a court may order their expulsion under Article 74 of the Criminal Code.

37

Section 27 § 6 of Law No. 1975/1991 provides that the Minister of Public Order may, in the public interest and if the person to be expelled is dangerous or risks absconding, order his detention until his deportation from Greece becomes feasible.

38

Section 27 § 7 of Law No. 1975/1991 provides that the details concerning the execution of deportation orders issued in accordance with the provisions of that law, as well as those ordered by the criminal courts in accordance with Article 74 of the Criminal Code, will be fixed by a common decision of the Ministers of Foreign Affairs, Justice and Public Order.

39

Decision No. 4803/13/7A/18.6.92 of the Ministers of Foreign Affairs, Justice and Public Order makes a number of provisions concerning the expulsion of aliens by administrative order. According to section 6 of the decision, «aliens subject to expulsion are detained in police detention centres or other appropriate places determined by the Minister of Public Order». On 1 April 1993 the Deputy Public Prosecutor of the Court of Cassation opined that decision No. 4803/13/7A/18-26.6.92 applies by analogy in cases of expulsion ordered by the courts.

40

On 29 November 1994 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or punishment (hereinafter the CPT) published a report following its visit to Greece in March 1993 which contains the following findings and recommendations concerning the Athens Police Headquarters (Alexandras Avenue):

«54. The principal detention facilities at the Athens police Headquarters were situated on the 7th floor of the Headquarters building. They consisted of 20 cells divided into two sections. The cells measured just over 12m², and were equipped with fixed benches for rest/sleeping purposes; the lighting was adequate, as would be the ventilation in the absence of overcrowding. In principle, the cellular accommodation could be considered as acceptable for persons obliged to remain in police custody for a relatively short period, on condition that the premises are kept clean and those obliged to spend the night in custody are provided with mattresses and blankets. 55. However, the delegation found that in addition to criminal suspects (who might stay for a maximum of some four to six days ...), the Headquarters were being used to accommodate for lengthy periods persons held under the Aliens legislation. Many of these persons met by the delegation had been held in the Headquarters' detention facilities for periods in excess of a month, and a few had been there for over three months.

Such a situation is not acceptable. The physical surroundings and the regime are quite unsuitable for such lengthy stays. There is not even the possibility of access to the open air: out of the cell “exercise” is taken in a corridor adjacent to the cells. 56. There were between 50 to 60 detained persons in the Headquarters at the time of the delegation's visit, some 60% of whom were being held under the aliens legislation. However, it was clear that shortly before the delegation's visit, the number of persons accommodated had been much higher. At least 50 persons had been transferred a few days earlier from the Headquarters to a new holding centre for aliens situated close to the airport...

For the most part, the detainees were being held two or three to a cell, though a cell reserved for women was accommodating five detainees. The delegation was told by persons detained that in the very recent past, ten or more persons had been held per cell. Given the cells' dimensions, such occupancy levels would be grossly excessive.

57. Police officers told the delegation that one set of cells was reserved for criminal suspects, and the other for persons held under the Aliens legislation; however, it was observed that, in practice, the separation between these two very different types of detained persons was not assured.

58. Persons detained had blankets at their disposal (though the delegation heard allegations that they had only been made available the day before the delegation's first visit), but not mattresses.

Toilet and shower facilities were situated alongside the cells, and no complaints were heard about access to those facilities; however, detainees did complain that they had not been provided with towels or soap. The state of cleanliness and overall state of repair of the toilets/shower facilities was appalling, although an attempt to improve the situation was made between the delegation's different visits.

59. As regards the detention facilities on the 7th floor of Athens Police Headquarters, the CPT wishes to make the following recommendations:

- that no-one be held in these facilities for longer than is absolutely necessary;
- that there be a maximum occupancy level of four persons per cell (with a possible exception as regards persons only staying a few hours in custody);
- that persons detained overnight be provided with both blankets and mattresses;
- that the toilet/shower facilities be renovated in a hygienic condition, and detained persons provided with the wherewithal to keep themselves clean;
- that means be sought of enabling persons detained for more than 24 hours to be offered outdoor exercise on a daily basis;
- that persons detained under the Aliens legislation be strictly separated from criminal suspects;
- that an information leaflet be given to persons detained under the Aliens legislation explaining the procedure applicable to them and their related rights; this leaflet to be available in the languages most commonly spoken by such persons and, if necessary, the

services of an interpreter provided».

41

In May 1997 and in October 1999 the CPT carried out two more visits to the Alexandras police Headquarters and the Drapetsona detention centre. The reports following these visits have not yet been made public.

THE LAW

I

Alleged violation of article 3 of the Convention (RCL 1999, 1190 y 1572)

42

The applicant complains about his conditions of detention, whilst awaiting his expulsion, in both Drapetsona and Alexandras. He invokes Article 3 of the Convention, which reads as follows:

«No one shall be subjected to torture or to inhuman or degrading treatment or punishment».

43

The Government argue that the conditions of detention of the applicant did not amount to inhuman or degrading treatment contrary to Article 3 because the required level of severity was not reached. The 17-month duration of the detention was due to the applicant's various efforts to stop his expulsion.

44

The Court recalls that, according to the Convention organs' case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 ([Ireland v. the United Kingdom judgment of 18 January 1978 \[TEDH 1978, 2\]](#) , Series A no. 25, p. 65, § 162). The same holds true insofar as degrading treatment is concerned ([Costello-Roberts v. the United Kingdom \[TEDH 1993, 17\]](#) , Series A no. 247-C, p. 59, § 30). The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see the above-mentioned Ireland v. the United Kingdom and Costello-Roberts v. the United Kingdom judgments, loc. cit.).

45

In the present case the Court notes that the applicant was first held for several months at the Drapetsona Police Station, which is a detention centre for persons held under Aliens legislation. He alleges, «inter alia», that he was confined in an overcrowded and dirty cell with insufficient sanitary and sleeping facilities, scarce hot water, no fresh air or natural daylight and no yard in which to exercise. It was even impossible for him to read a book because his cell was so overcrowded. In April 1998 he was transferred to the Police Headquarters in Alexandras Avenue, where conditions were similar to those in Drapetsona

and where he was detained until 3 December 1998, the date of his expulsion to Syria.

The Court observes that the Government did not deny the applicant's allegations concerning overcrowding and a lack of beds or bedding.

46

The Court considers that conditions of detention may sometimes amount to inhuman or degrading treatment. In the Greek case (Yearbook of the European Convention on Human Rights no. 12, 1969), the Commission reached this conclusion regarding overcrowding and inadequate facilities for heating, sanitation, sleeping arrangements, food, recreation and contacts with the outside world. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant. In the present case, although the Court has not conducted an on-site visit, it notes that the applicant's allegations are corroborated by the conclusions of the CPT report of 29 November 1994 regarding the Police Headquarters in Alexandras Avenue. In its report the CPT stressed that the cellular accommodation and detention regime in that place were quite unsuitable for a period in excess of a few days, the occupancy levels being grossly excessive and the sanitary facilities appalling. Although the CPT had not visited the Drapetsona detention centre at that time, the Court notes that the Government had described the conditions in Alexandras as being the same as in Drapetsona, and the applicant himself conceded that the former were slightly better with natural light, air in the cells and adequate hot water. 47. Furthermore, the Court does not lose sight of the fact that in 1997 the CPT visited both the Alexandras Police Headquarters and the Drapetsona detention centre and felt it necessary to renew its visit to both places in 1999. The applicant was detained in the interim from July 1997 to December 1998.

48

In the light of the above, the Court considers that the conditions of detention of the applicant in the Alexandras Police Headquarters and the Drapetsona detention centre, in particular the serious overcrowding and absence of sleeping facilities, combined with the inordinate length of the period during which he was detained in such conditions, amounted to degrading treatment contrary to Article 3.

49

Accordingly, there has been a violation of Article 3 of the Convention.

II

Alleged violation of article 5 of the Convention

50

The applicant also complains under Article 5 of the Convention about the lawfulness and length of his detention and the lack of remedies under domestic law in this connection. Article 5 of the Convention provides the following:

«1. Everyone has the right to liberty and security of person. No one shall be deprived of

his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful».

51

The Government submit that the applicant was detained pursuant to a court decision ordering his expulsion. It transpires from this decision that the applicant was considered a danger to public order and safety, otherwise he would not have been expelled. Moreover, the detention had a basis in domestic law: Article 74 of the Criminal Code and section 27 § 7 of Law 1975/1991, in conjunction with section 6 of the ministerial decision No. 4803/13/7A/18-26.6.1992. The 17-month duration of the detention was due to the applicant's various efforts to stop his expulsion.

52

The Government further submit that the judicial control of the lawfulness of the applicant's detention was incorporated in the decision ordering his expulsion. In any event, on 11 May 1998 the Piraeus court reviewed the question of the applicant's expulsion and, by implicit extension, that of his detention.

53

The applicant submits that, in the absence of any statutory provisions, an opinion of the Public Prosecutor of the Court of Cassation cannot render his detention lawful. Moreover, he did not have any remedies to challenge the lawfulness of his lengthy detention; his requests to the ministers of Justice and Public Order, whereby he invited them to lift the expulsion order and release him, did not constitute judicial remedies and were all rejected or remained unanswered. In fact, as his detention was neither ordered by an administrative decision nor by a court judgment, no remedy under domestic law was available to him to challenge its lawfulness.

54

The Court recalls that it is not in dispute that the applicant was detained «with a view to deportation» within the meaning of Article 5 § 1 (f). However, it falls to the Court to examine whether the applicant's detention was «lawful» for the purposes of Article 5 § 1 (f), with particular reference to the safeguards provided by the national system. Where the «lawfulness» of detention is in issue, including whether «a procedure prescribed by law» has been followed, the Convention refers essentially to the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, namely to protect the individual from arbitrariness (see [Chahal v. the United Kingdom judgment of 15](#)

[November 1996 \[TEDH 1996, 61 \]](#) , Reports of Judgements and Decisions, 1996-V, § 118). 55. In this respect, the Court recalls that in laying down that any deprivation of liberty must be effected «in accordance with a procedure prescribed by law», Article 5 § 1 primarily requires that any arrest or detention have a legal basis in domestic law.

However, these words do not merely refer back to domestic law; they also relate to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all Articles of the Convention. Quality in this sense implies that where a national law authorises deprivation of liberty, it must be sufficiently accessible and precise, in order to avoid all risk of arbitrariness (see the [Amuur v. France judgment of 25 June 1996 \[TEDH 1996, 29 \]](#) , Reports of Judgments and Decisions 1996-III, § 50).

56

The Court notes that Section 27 § 6 of Law No. 1975/1991, which applies to the expulsion of aliens by administrative order, provides for the detention of an alien on condition that the execution of an administrative order for expulsion taken by the Minister of Public Order is pending, and that the alien is considered to be a danger to public order or might abscond.

In the present case the expulsion of the applicant was ordered by a court and not by an administrative decision. Moreover, the applicant was not considered a danger to public order. The indictments chamber, which ordered his release from prison in July 1997, held that it transpired from the applicant's conduct during detention that he was not going to commit any further offences when released and that it was not necessary to prolong his detention.

57

The Court further notes that on 1 April 1993 the Deputy Public Prosecutor of the Court of Cassation opined that decision No. 4803/13/7A/18-26.6.92 applied by analogy in cases of expulsion ordered by courts. The Court does not consider that the opinion of a senior public prosecutor –concerning the applicability by analogy of a ministerial decision on the detention of persons facing administrative expulsion– constituted a «law» of sufficient «quality» within the meaning of the Court's case-law.

58

In these circumstances, the Court finds that there has been a breach of Article 5 § 1 of the Convention in the present case.

59

Having found that the detention of the applicant did not in any event comply with the requirement of Article 5 § 1, the Court does not find it necessary to examine separately whether that provision was also violated by reason of the length of the applicant's detention.

60

Examining the applicant's complaint from the viewpoint of Article 5 § 4 of the Convention, the Government argue that the Article 5 § 4 review was incorporated in the court decisions ordering the applicant's expulsion (16 July 1997) and refusing to revoke it (11 May 1998).

61

The Court recalls that the notion of «lawfulness» under paragraph 4 of Article 5 has the same meaning as under paragraph 1, so that the detained person is entitled to a review of his detention in the light not only of the requirements of domestic law but also of those in the text of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 § 1. Article 5 § 4 does not guarantee a right to a judicial review of such breadth as to empower the Court, on all aspects of the case including questions of pure expediency, to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to bear on those conditions which are essential for the «lawful» detention of a person according to Article 5 § 1 (see the above-mentioned *Chahal v. the United Kingdom* judgment, § 127).

62

The Court notes that the requests of the applicant of 28 November 1997 and 26 July 1998 to the Ministers of Justice and Public Order to release him cannot be considered effective remedies whereby the applicant could challenge the lawfulness of his detention. By submitting them, the applicant appealed to the discretionary leniency of these Ministers, who either rejected them or left them unanswered. Moreover, in its decision of 11 May 1998, the indictments chamber of the first instance criminal court of Piraeus, sitting in camera, failed to rule on the applicant's claim concerning his detention.

63

It follows that the domestic legal system did not afford the applicant an opportunity to have the lawfulness of his detention pending expulsion determined by a national court, as required by Article 5 § 4.

64

The Court concludes that there has also been a violation of Article 5 § 4 of the Convention.

III

Application of article 41 of the Convention

65

Article 41 of the Convention provides:

«If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party».

A

Damage and costs

66

The applicant in effect claims a global sum of 18 000 000 drachmas (GRD) for pecuniary and non-pecuniary damage, as well as for costs and expenses.

67

The Government consider that amount excessive.

68

The Court notes that the applicant has not sought to substantiate his claim of pecuniary damage. Accordingly, no such damage has been established and the claim fails under this head.

69

As regards the claim for non-pecuniary damage, the Court recalls the number and seriousness of the violations it has found in the present case for which the applicant should be awarded compensation. The applicant has also incurred costs relating to his representation before the Commission and the Court. Ruling on an equitable basis, as provided for in Article 41 of the Convention, the Court decides to award a total of GRD 5.000.000 for non-pecuniary damage and costs, plus any value-added tax that may be chargeable.

B

Default interest

70

According to the information available to the Court, the statutory rate of interest applicable in Greece at the date of adoption of the present judgment is 6% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1

Holds that there has been a violation of Article 3 of the [Convention \(RCL 1999, 1190 y 1572\)](#) ;

2

Holds that there has been a violation of Article 5 § 1 of the Convention;

3

Holds that there has been a violation of Article 5 § 4 of the Convention;

4

Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 5.000.000 (five million) drachmas in respect of non-pecuniary damage and costs, plus any value-added tax that may be chargeable;

(b) that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;

5

Dismisses the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 6 March 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. Dollé

Registrar

J.-P. Costa

President