CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 40907/98
by Mohamed DOUGOZ
against Greece

The European Court of Human Rights (Third Section) sitting on 8 February 2000 as a Chamber composed of

Sir Nicolas Bratza, *President*,
Mr C. Rozakis,
Mr J.-P. Costa,
Mr L. Loucaides,
Mr P. Kūris,
Mrs F. Tulkens,
Mr K. Jungwiert, *judges*,

and Mrs S. Dollé, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 24 April 1998 by Mohamed Dougoz against Greece and registered on 24 April 1998 under file no. 40907/98;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 18 June 1998 and the observations in reply submitted by the applicant on 21 July 1998;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Syrian national, born in 1963. He is currently in Syria.

He is represented before the Court by Ms. I. Kourtovik, a lawyer practising in Athens.

A. Particular circumstances of the case

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

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.

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

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 (*trimeles efetio*) 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 (*pendameles efetio*) of Athens in 1989.

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.

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

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 (*mikto orkoto efetio*) and was sentenced to five and a half years' imprisonment.

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.

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".

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 this country. However, the applicant 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.

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.

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 special chamber of the first instance criminal court (*simvulio plimmeliodikon*) 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.

Following this decision, the applicant was released from prison on 10 July 1997 and he was placed in police detention pending his expulsion. Initially the applicant was detained in a detention centre in Drapetsona. He was issued with a temporary passport from the Greek authorities and on 12 September 1997 was given leave to enter Syria by the Syrian Embassy in Athens.

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.

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.

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.

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

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.

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 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 and that the expulsion order had been made in breach of national law.

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

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 Drapetsona.

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.

On 11 May 1998 the special 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.

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

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.

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

B. Relevant domestic law and practice

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."

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

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.

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.

Section 27 § 7 of Law No. 1975/1991 provides that the Ministers of Foreign Affairs, Justice and Public Order shall execute expulsion orders issued, *inter alia*, by the courts.

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 expulsions ordered by the courts.

COMPLAINTS

1. Before his expulsion from Greece, the applicant had complained under Articles 2 and 3 of the Convention that, if sent to Syria, his life would be at risk and he would be in danger of being subjected to torture or inhuman treatment.

2. The applicant complains under Article 3 of the Convention of the conditions of his detention awaiting expulsion.

3. The applicant also complains under Article 5 of the Convention about the lawfulness and length of his detention. Moreover, he claims that there are no domestic remedies under Greek law in this connection.

4. Finally, the applicant complains under Article 6 of the Convention that the expulsion order against him was made in breach of Greek law. According to the applicant, a court deciding to release a prisoner on licence cannot subject him to an alternative penalty or security measure that had not been imposed at the criminal trial. He also complains that he did not participate in the hearing leading to the making of this order.

PROCEDURE

The application was introduced and registered on 24 April 1998.

On the same day the President of the European Commission of Human Rights decided to communicate the application to the respondent Government. He also gave an indication under Rule 36 of the Commission's Rules of Procedure.

The Government's written observations were submitted on 18 June 1998. The applicant replied on 21 July 1998, after an extension of the time-limit fixed for that purpose.

On 10 July 1998 the Commission decided not to renew the indication given under Rule 36 of the Commission's Rules of Procedure.

On 21 August 1998 the applicant submitted further observations.

On 29 October 1998 the Commission decided to request the Government to submit additional observations.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

The Government's additional observations were submitted on 10 March 1999, after an extension of the time-limit fixed for that purpose. The applicant replied on 10 September 1999.

On 8 February 2000 the Court (Third Section) decided to take into consideration the applicant's last set of observations, which had been submitted out of time.

THE LAW

1. Before his expulsion from Greece, the applicant had complained under Articles 2 and 3 of the Convention that, if sent to Syria, his life would be at risk and he would be in danger of being subjected to torture or inhuman treatment.

Article 2 of the Convention guarantees the right to life and Article 3 prohibits torture and inhuman or degrading treatment or punishment.

The Government argue that the application was submitted outside the six-month period in Article 35 § 1 of the Convention, which must be calculated from 16 July 1997 when the Piraeus court ordered the applicant's expulsion. Moreover, the Government submit that the applicant had not substantiated his allegations concerning the risks he ran in Syria. The applicant had even requested the authorities to send him to that country.

The applicant submits that he has complied with the six-month requirement in Article 35 § 1 of the Convention because, when lodging his application, he was still facing expulsion. Furthermore, the applicant claims that his lawyer requested his return to Syria without consulting him. As regards the risks in Syria, the applicant points out that he had been recognised as a refugee by the UNHCR and that, upon his return to that country, he was put in prison.

The Court considers that the application has not been submitted out of time, since on the date of its introduction the applicant was still awaiting expulsion.

As regards the substance of the complaint, the Court recalls that, under its case-law, the expulsion of an asylum-seeker may engage a Contracting Party's responsibility under Article 3 of the Convention where substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment (the Vilvarajah and Others v. the United Kingdom judgment of 30 October 1991, Series A no. 215, p. 34, § 102). Moreover, the Commission did not exclude that an issue might arise under Article 2 of the Convention in circumstances in which the expelling State knowingly puts the person concerned at such a high risk of losing his life that the outcome is a near-certainty (Bahaddar v. the Netherlands, Comm. Report 13.9.96, *Reports of Judgments and Decisions 1998-I*, § 78, p. 271). According to the case-law of the Court, the existence of the risk is assessed primarily with reference to those facts that were known or ought to have been known to the Contracting Party at the time of the expulsion (the above-mentioned Vilvarajah and Others v. the United Kingdom judgment, p. 36, § 107).

The Court notes that the applicant has provided very little information concerning the circumstances that led originally to his departure from Syria and on how he found himself in Greece. Moreover, it notes that the applicant has not provided any evidence in support of his allegation that, upon his return to Syria, he was placed in detention. He has not alleged that he has been tortured or otherwise severely ill-treated since his return.

In any event, the Court recalls that the applicant's asylum claim rested on the criminal proceedings that had allegedly been instituted against him in Syria, resulting in the death penalty *in absentia*. However, the Court notes that, although the applicant had been recognised as a refugee by the UNHCR, on 25 June 1997 he declared to the Greek authorities that he could return to Syria because he had been granted a reprieve. It follows that, according to the facts as known to the Greek authorities at the material time, there was no risk that the applicant would face inhuman or degrading treatment or punishment, or that his life would be at risk, if returned to Syria.

As a result, there is no appearance of a violation of Articles 2 and 3 of the Convention in the circumstances of the case. Consequently, the Court concludes that this part of the application is to be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant complains under Article 3 of the Convention that his conditions of detention, whilst awaiting his expulsion, in both Drapetsona and Alexandras amounted to inhuman and degrading treatment.

The Government submit that the applicant did not complain to the Commission about his conditions of detention. In any event, they argue that the conditions in Drapetsona and Alexandras did not amount to inhuman or degrading treatment contrary to Article 3 of the Convention 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.

The Court notes that the applicant expressly complained about his conditions of detention in his first letter of 24 April 1998 and in his observations of 21 July 1998 and 21 August 1998.

In the light of the parties' observations, the Court considers that this part of the application raises serious questions of fact and law which are of such complexity that their

determination should depend on an examination of the merits. This part of the application cannot, therefore, be regarded as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established.

3. 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."

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 dangerous for 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 1975/91, in conjunction with section 6 of 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.

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 extension, that of his detention.

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 for challenging the lawfulness of his lengthy detention.

In the light of the parties' observations, the Court considers that this part of the application raises serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. This part of the application cannot, therefore, be regarded as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established.

4. Finally, the applicant complains under Article 6 of the Convention of the proceedings leading to the expulsion order of 16 July 1997 which, moreover, was allegedly in breach of Greek law.

Article 6 § 1 of the Convention provides as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair … hearing …"

Even assuming that Article 6 § 1 of the Convention applies to the proceedings in question, the Court notes that the applicant had himself requested to be expelled. It follows that he cannot claim to be a victim of a violation within the meaning of Article 34 of the Convention (see, *mutatis mutandis*, No. 8083/77, Dec. 13.3.80, D.R. 19, p. 223).

Consequently, the Court concludes that this part of the application is also to be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits, the applicants' complaints concerning the conditions, lawfulness and length of his detention and the lack of domestic remedies in respect of the lawfulness of his detention;

DECLARES INADMISSIBLE the remainder of the application.

S. Dollé
Registrar

N. Bratza
President