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

COURT (CHAMBER)

CASE OF KAMPANIS v. GREECE

(Application no. 17977/91)

JUDGMENT

STRASBOURG

13 July 1995

In the case of Kampanis v. Greece[1],

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2], as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr R. BERNHARDT,
Mr A. SPIELMANN,
Mr N. VALTICOS,
Mr A.B. BAKA,
Mr G. MIFSUD BONNICI,
Mr J. MAKARCZYK,
Mr B. REPIK,
Mr P. KURIS,

and also of Mr H. Petzold, Registrar,

Having deliberated in private on 22 February and 19 June 1995,

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

PROCEDURE

1. The case was referred to the Court by the Greek Government ("the Government") on 1 June 1994, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 17977/91) against the Hellenic Republic lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) by a Greek national, Mr Stamatios Kampanis, who also has Canadian nationality, on 7 March 1991. The Government's request referred to Articles 44 and 48 (b) (art. 44, art. 48-b) of the Convention and to Rule 32 of Rules of Court A. The object of the request was to obtain a decision by the Court as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 5 para. 4 (art. 5-4) of the Convention.

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[1] The case is numbered 19/1994/466/547. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

[2] Rules A apply to all cases referred to the Court before the entry into force of Protocol No.9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d), the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr N. Valticos, the elected judge of Greek nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 25 June 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr R. Macdonald, Mr A. Spielmann, Mr G. Mifsud Bonnici, Mr J. Makarczyk, Mr B. Repik and Mr P. Kuris (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently Mr A.B. Baka, substitute judge, replaced Mr Macdonald, who was unable to take part in the further consideration of the case (Rule 22 paras. 1 and 2 and Rule 24 para. 1).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the memorials of the Government and the applicant on 8 and 12 December 1994 respectively. On 16 January 1995 the Secretary to the Commission informed the Registrar that the Delegate would make his submissions at the hearing.

5. In accordance with the decision of the President, who had granted the applicant's lawyer leave to use the Greek language (Rule 27 para. 3), the hearing took place in public in the Human Rights Building, Strasbourg, on 21 February 1995. The Court had held a preparatory meeting beforehand. There appeared before the Court:

(a) for the Government
Mr V. KONDOLAIMOS, Senior Adviser,
Legal Council of State, *Delegate of the Agent*;

(b) for the Commission
Mr C.L. ROZAKIS, *Delegate*;

(c) for the applicant
Mr J. STAMOULIS, dikigoros (lawyer), *Counsel*.

The Court heard addresses by them and their replies to its questions. The Delegate of the Agent produced a number of documents at the hearing. On 3, 14 and 16 March respectively, the Delegate of the Commission, the Government and the applicant's lawyer replied in writing to one of the questions asked by the Court at the hearing.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

6. Mr Kampanis is a physicist by training and has dual Greek and Canadian nationality. He was formerly the chairman and managing director of "Greek Armaments Industry" (Elliniki Viomikhania Oplon, "EVO"), a publicly owned company.

A. The first set of charges against the applicant

7. On 21 November 1988, following a complaint lodged on 8 November 1988 by the Deputy Minister of Defence, the prosecutor at the Athens Criminal Court (Isangeleas Protodikon) sought the opening of an investigation in respect of the applicant in connection with alleged offences of misappropriation and repeated fraud to the detriment of EVO, making false statements and incitement to misappropriation and fraud. In a further application of 16 December 1988 the prosecutor sought an extension of the investigation to cover alleged offences of misappropriation by a civil servant in the performance of his duties.

8. On 19 December 1988 the investigating judge at the Athens Criminal Court, after questioning the applicant, charged him on several counts of aggravated misappropriation by a civil servant in the performance of his duties, and making false statements. On 23 December 1988, by order no. 24/1988, he remanded Mr Kampanis in custody with effect from 21 December, the date of his arrest, on the grounds that there was sufficient prima-facie evidence of his guilt and that it was necessary to prevent him from absconding and to make sure that he did not commit further offences. On 3 July 1989 the Indictment Division of the Athens Criminal Court (symvoulio plimmeliodikon) ordered that he was to remain in detention on remand.

9. On 18 July 1989 the applicant applied for release on bail. One month later the investigating judge rejected this application on account of the seriousness of the charges against the applicant, the severity of the penalties which he risked and the danger that evidence not yet brought to the prosecuting authorities' attention might be concealed. He noted in that connection that the accused had held an influential post at the head of a State undertaking and had contacts with civil servants who, at his instigation, might suppress documentary evidence and provide false certificates or make false statements. Moreover, Mr Kampanis had kept his Canadian nationality and could thus go to Canada at any time. Lastly, his academic qualifications, his knowledge of languages and his professional

experience would have made it easy for him to settle in a foreign country. There was accordingly a risk that the applicant might abscond.

B. The second and third sets of charges against the applicant

10. On 31 July 1989 the investigating judge at the Athens Criminal Court charged the applicant, in connection with the same investigation, with misappropriation and fraud relating to expenditure he had incurred and a number of contracts he had concluded on behalf of EVO with a Canadian company. The judge in question then made a second order (no. 6/1989) remanding Mr Kampanis in custody.

11. On 3 October 1989, still in connection with the same investigation, the same judge charged the applicant on a number of counts of aggravated misappropriation to the detriment of EVO, linked in particular to the payment of commissions during negotiations concerning arms sale contracts.

C. Assignment of the case to a special investigating judge of the Athens Court of Appeal and the fourth set of charges preferred against the applicant

12. On 9 January 1990 a full court (olomelia efetiou) of the Athens Court of Appeal decided, under Article 29 of the Code of Criminal Procedure, to assign the investigation of the three cases known as the "EVO cases" to a judge at the Court of Appeal in order to complete the pre-trial procedure "as rapidly as possible".

13. On 24 May 1990 the Court of Appeal's special investigating judge charged the applicant and a large number of his former colleagues on a number of counts of misappropriation by a civil servant in the performance of his duty. He also made a further order remanding the applicant in custody (no. 1/1990), which was executed on 26 May.

14. On 5 June 1990 Mr Kampanis appealed against this order to the Indictment Division of the Athens Court of Appeal (symvoulio efeton). He alleged that his continued detention infringed Article 6 para. 4 of the Constitution (see paragraph 31 below) and that the order failed to give sufficient reasons.

In a decision (voulevma) of 28 June 1990 the Indictment Division dismissed the appeal as out of time, since it had been lodged after expiry of the five-day period laid down in Article 285 para. 1 of the Code of Criminal Procedure.

D. The closure of the investigation and the applications for release lodged prior to 30 January 1991

15. On 11 June 1990 the investigating judge informed the applicant, in accordance with Article 308 para. 6 of the Code of Criminal Procedure, that he had closed the investigation. On 5 September 1990 the prosecutor sent the file to the Indictment Division so that it could decide whether to commit the applicant for trial (see paragraph 23 below).

16. On 13 June 1990 Mr Kampanis unsuccessfully applied for release on bail. The Indictment Division - before which he had in addition requested leave to appear in order to be able to reply to the prosecutor's submissions - dismissed his application on 6 July 1990 on the ground that the investigating judge's decision was sufficiently reasoned and well-founded in law.

17. In the meantime, on 27 June 1990, the principal public prosecutor at the Court of Appeal had asked the Indictment Division to prolong Mr Kampanis's detention for a further six-month period.

On 5 July 1990 the applicant sought the Indictment Division's leave to appear before it in order to present argument in support of his application for release. He emphasised that the legislation in force made no provision for the appearance of the parties and in particular of the accused or his counsel during the proceedings before investigating judges or indictment divisions; this was a lacuna and a flaw in the legislation, stemming from the inquisitorial nature of the system and from the principle of confidentiality, which often ran counter not only to the accused's defence rights but also to the interests of justice. While acknowledging that Article 287 para. 2 of the Code of Criminal Procedure - applicable to that stage of the proceedings - did not contain any provision similar to that in Article 287 para. 1 (see paragraphs 32 and 33 below), he relied on the latter provision by analogy and on the fact that his detention had been prolonged beyond the twelve-month limit laid down in the Constitution (see paragraph 31 below) to support his contention that he should be allowed to appear before the Indictment Division.

In a decision of 16 July 1990 the Indictment Division allowed the prosecutor's application - after hearing him on 10 July in the absence of the accused - and confirmed the prolongation of the applicant's detention on remand. Neither the prosecutor nor the Indictment Division dealt with the applicant's arguments concerning his application for leave to appear.

18. On 18 and 19 July 1990 Mr Kampanis complained of the length of his detention on remand to the prosecutor at the Piraeus Criminal Court and the principal public prosecutor at the Court of Cassation.

19. On 18 September 1990 he again requested his release. In support of his application he maintained that, if the correct legal classification were given to the offences of which he was accused, the length of detention on

remand in respect of the offences referred to in the last two detention orders (see paragraphs 10 and 13 above) would have to be calculated from the date of his imprisonment under the first order, of 21 December 1988 (see paragraph 8 above); the continuation of his detention after 21 June 1990 was therefore unlawful.

In a decision (no. 2648/90) of 13 November 1990 the Indictment Division rejected the application on the ground that the offences cited in the second and third detention orders had each been constituted by a separate criminal act (see paragraphs 10 and 13 above).

E. The application for release of 30 January 1991

20. On 30 January 1991 the applicant submitted a further application for release to the Indictment Division, before which the question of his committal for trial was then pending. He argued that his detention was based on the successive orders of 23 December 1988, 31 July 1989 and 24 May 1990, each of which had fixed a new starting-point for calculating the length of detention, and that as a result he had remained in prison, without being committed for trial, for twenty-five months and ten days, whereas the maximum period authorised under Article 6 para. 4 of the Constitution was twelve months or, in exceptional circumstances, eighteen months. Such a period, whose length, he argued, was due to the slow progress of the investigation, the splitting up of the alleged offences into separate sets of charges and the making of successive detention orders, was in breach of the Greek Constitution and of Article 5 para. 3 (art. 5-3) of the Convention as interpreted by the European Commission and Court of Human Rights. He also complained that the Indictment Division had not yet ruled on his complaint of a violation of the Convention, although he had already raised it several times. Lastly, he requested leave to appear with his lawyer in order to put forward his arguments.

21. On 6 February 1991 the Indictment Division heard the prosecutor, who expanded on the written submissions he had filed the day before.

22. On 13 February 1991 the Indictment Division dismissed Mr Kampanis's applications (decision no. 553/91). It held that Article 5 (art. 5) of the Convention neither specified what was a reasonable length of time for an accused to be held in pre-trial detention nor laid down a procedure for deciding whether to release him. On the other hand, these matters were specifically dealt with in Articles 282 and 287 of the Code of Criminal Procedure and Article 6 para. 4 of the Constitution.

It noted that the accused had initially been detained for eighteen months under order no. 24/1988 of 23 December 1988 and that at the end of this period he had been "released but only nominally", since in the meantime two further orders had been made against him, namely the order of 31 July 1989 (no. 6/1989), extended by virtue of Article 287 para. 2 until 31

January 1991 (and in respect of which the application concerned was now devoid of purpose), and the order of 24 May 1990 (no. 1/1990), which was still valid.

After examining the whole of the proceedings to date and referring in particular to its decision of 13 November 1990 (see paragraph 19 above), it held that Mr Kampanis's contention that some of the separate offences he had been charged with in fact constituted a single offence - and, in the alternative, that the separate offences alleged against him derived from a single criminal act - went to the merits of the charges and the legal classification of the offences in issue. The Indictment Division's task under Article 29 para. 3 of the Code of Criminal Procedure was to determine at first and last instance whether the charges were lawful and whether there was a case to answer. It would therefore give a final decision on the questions raised by the applicant only after weighing all the evidence. It would then decide at the same time whether to prolong the detention or order the applicant's release (Article 315 para. 1 of the Code of Criminal Procedure - see paragraph 38 below). The application for release of 30 January 1991, which had the same purpose and was based on the same evidence as the application of 18 September 1990, was accordingly premature and should be declared inadmissible.

Lastly, the Indictment Division held Mr Kampanis's application for leave to appear in person to be ill-founded. On this point it followed the reasoning of the prosecutor, who had argued in his submissions of 5 February 1991 that such an appearance "[could] be contemplated only where the Indictment Division [was] about to rule on the merits of the case or in those cases where it [was] specifically provided for by law (Athens Court of Appeal, judgment no. 334/1982, Pinika Chronika, vol. 52, p. 685)" (see paragraph 39 below).

F. The applicant's committal for trial at the Criminal Court of Appeal

23. In the meantime, on 17 September 1990, the Indictment Division, having before it the question whether to commit Mr Kampanis for trial (see paragraph 15 above), had heard the prosecutor, who had withdrawn after making his submissions. In a written submission of 5 September he had applied for the applicant's committal and prolongation of his detention under order no. 1/1990 (see paragraph 15 above). On 18 December 1990 the applicant sought leave to appear before the Indictment Division.

24. In a decision (no. 763/91) of 26 February 1991, which ran to 314 pages, the Indictment Division, after deliberating on 19 December 1990 and 15 February 1991, committed the applicant and fourteen of his co-accused for trial at the Athens Court of Appeal sitting as a court of criminal jurisdiction and composed of three judges (Trimeles efetio kakourgimaton).

It indicted the applicant, as the chairman and managing director of a publicly owned company, on several counts of aggravated misappropriation and fraud, these being acts which constituted continuous offences. It also indicted him on a charge of making false statements in his capacity as a civil servant. It further held that the circumstances in which these crimes had been committed showed that Mr Kampanis was particularly dangerous, and accordingly ordered that his detention should continue.

With regard to the applications for leave to appear lodged by the applicant and his co-accused, the Indictment Division noted that the written submissions accompanying them were so comprehensive that oral clarification was not necessary. In addition, the pleadings lodged on their behalf after the prosecutor's submissions adduced no new material and did not affect the assessment of the evidence. More particularly, with regard to the applicant, the Indictment Division held that, without breaching Article 309 para. 2 of the Code of Criminal Procedure (see paragraph 37 below), it could refuse to examine his application on the ground that it had been submitted on 18 December 1990, and therefore after the hearing of 17 September 1990 (see paragraph 23 above).

G. The application for release of 29 March 1991

25. On 29 March 1991 Mr Kampanis again applied for release and for leave to appear in person. He repeated his argument that the length of his detention on remand was in breach of the Constitution and the Code of Criminal Procedure. He submitted that the starting-point of this period was the date on which he was first imprisoned in respect of one of the acts constituting the continuous offence. Consequently, the period concerned had considerably exceeded the eighteen-month limit laid down by the Constitution and he should be released. In the alternative, he asked to be placed under judicial supervision under Article 291 para. 1 of the Code of Criminal Procedure (see paragraph 34 below).

26. On 2 April 1991 the Indictment Division heard the prosecutor, who lodged the case file and the submissions he had drawn up the previous day.

On 16 April 1991 the Indictment Division held a hearing at which the applicant addressed the court, in the prosecutor's presence. It appears from the record that he repeated in substance the arguments set out in his pleading of 15 April 1991. He was given until 23 April to file further observations.

27. In a decision (no. 1488/91) of 9 May 1991 the Indictment Division rejected the application. The two orders remanding the applicant in custody, made on 23 December 1988 and 31 July 1989 by the investigating judge of the Athens Criminal Court (see paragraphs 8 and 10 above), had lapsed on 21 June 1990 and 31 January 1991 respectively. Mr Kampanis's position was now governed only by the order of 24 May 1990 made by the

special investigating judge of the Athens Court of Appeal (see paragraph 13 above). Consequently, the length of his detention had to be calculated from that date and not from the date on which the applicant was first imprisoned. The Indictment Division gave as the reasons for its decision the fact that there had been a number of separate offences each constituted by a separate criminal act, the need for a second investigation, the applicant's refusal to co-operate and the complexity of the case, whose elucidation had required numerous audits in addition to the judicial investigation.

In a further decision (no. 1549/91), of 17 May 1991, the same Indictment Division decided to prolong the applicant's detention on remand for an additional six months.

28. On 27 August and 20 September 1991 the Court of Cassation dismissed Mr Kampanis's appeals on points of law against the decisions of 9 and 17 May 1991 on the ground that no such appeal lay against those decisions (Articles 287 para. 2, 291 and 482 of the Code of Criminal Procedure).

H. The applicant's release and trial

29. The applicant was released on 24 November 1991. In the meantime, on 13 September 1991, the trial had begun before the Athens Criminal Court of Appeal, sitting with three judges.

30. On 30 January 1992 (judgment no. 232/92), at the end of a trial that had lasted four months, the court found the applicant guilty on a number of counts of aggravated misappropriation and sentenced him to seven years' imprisonment. It deducted from that term the period of two years, eleven months and three days he had spent in detention on remand and fixed the outstanding term at four years and twenty-seven days.

On 1 July 1994 the Athens Court of Appeal, sitting with five judges to hear an appeal lodged by Mr Kampanis against judgment no. 232/92, held that the offences should be classified as less serious offences and reduced the sentence to two years and six months' imprisonment, from which it deducted his detention on remand and his imprisonment up to that date (from 30 January 1992 to 5 May 1992). Lastly, it held that the State was under no duty to pay the applicant damages for the extra period during which he had been deprived of his liberty.

II. RELEVANT DOMESTIC LAW

A. The Constitution

31. Article 6 para. 4 of the 1975 Constitution provides:

"The maximum length of detention on remand shall be laid down by law and may not exceed one year in connection with offences classified as serious crimes or six months in connection with less serious offences. In very exceptional cases these maximum limits may be extended by six or three months respectively by order of the competent Indictment Division."

B. The Code of Criminal Procedure

1. Provisions concerning the length of detention on remand

32. At the material time, Article 287 of the Code of Criminal Procedure, which concerns the maximum limits of detention on remand, provided:

"1. Where, during an investigation, detention on remand has lasted six months in the case of offences classified as serious crimes, or three months in the case of less serious offences, the investigating judge must within the next five days send the principal public prosecutor at the Court of Appeal a report setting out the reasons why the investigation has not been completed. The latter shall transmit the case file to the public prosecutor, who shall refer it to the Indictment Division. After hearing the parties or their counsel, who shall be given notice to appear at least twenty-four hours before the deliberations, the Indictment Division shall give a final, reasoned decision on the question whether to prolong detention or release the accused.

2. In all cases, and including the period between the end of the investigation and the adoption of the final decision, detention on remand in respect of a single offence shall not exceed one year where the offence is classified as a serious crime or six months where it is a less serious offence. In exceptional circumstances the competent Indictment Division may make a reasoned order or orders, against which no appeal shall lie, extending these limits by up to six months or three months respectively ...

Where a case is pending before the investigating judge and the accused's detention on remand has been prolonged in accordance with paragraph 1 of this Article, the investigating judge must transmit the file to the public prosecutor, thirty days before the date on which the maximum period of detention on remand provided for in this paragraph is due to expire, together with a report stating the reasons why it is necessary to extend detention on remand. The public prosecutor shall forward the file and the above-mentioned report to the Indictment Division with his proposal. In all other cases the competent prosecutor must submit to the Indictment Division, at least twenty-five days before the date on which the maximum period of detention on remand provided for in this paragraph, or an extension period previously ordered, is due to expire, a proposal calling for the detention order to be either extended or rescinded.

...

6. Any uncertainty or disagreement about the maximum limits for detention on remand set out in the first and second paragraphs of this Article shall be determined by the competent Indictment Division, which must give the accused notice to appear forty-eight hours beforehand. Either the accused or the prosecutor may appeal on points of law against the decision of the Indictment Division."

This last paragraph was inserted by Law no. 1897/90, Article 14 of which gave it retrospective effect from 24 July 1974.

Article 287 paras. 1 and 2, as amended by Law no. 2207/94 of 1994, now provide as follows:

> "1. Where detention on remand has lasted six months in the case of offences classified as serious crimes, or three months in the case of less serious offences, the Indictment Division shall give a final, reasoned decision on the question whether to prolong detention or release the accused. To that end:
>
> (a) Where the investigation is still in progress, the investigating judge must, within the five days preceding the end of the period mentioned above, send the principal public prosecutor at the Court of Appeal a report setting out the reasons why the investigation has not been completed and transmit the file to the prosecutor at the Court of First Instance, who shall communicate it within ten days to the Indictment Division. Five days at the latest before the latter's deliberations the accused shall be given notice to appear, either in person or represented by his lawyer, whom he shall instruct by means of a letter countersigned by the prison governor. The Indictment Division shall give its decision after hearing the accused or his lawyer, if they are present, and the prosecutor. Where the investigation is being conducted by a judge of the Court of Appeal pursuant to Article 29, the decision shall be given by the Indictment Division of the Court of Appeal.
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> (b) After the end of the investigation, and within the five days preceding the end of the period mentioned above, the prosecutor at the court in which the case is to be tried or at the Court of Appeal ... must transmit the file, together with a reasoned proposal, to the Indictment Division which has jurisdiction pursuant to the provisions of the following paragraph. In other respects the provisions of sub-paragraph (a) shall apply.
>
> 2. In all cases, and until adoption of the final decision, detention on remand in respect of a single offence shall not exceed one year where the offence is classified as a serious crime or six months where it is a less serious offence. In exceptional circumstances these limits may be extended by six months or three months respectively by a reasoned decision, against which no appeal shall lie, of
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> (a) the Indictment Division of the Court of Appeal ...;
>
> (b) the Indictment Division of the Court of First Instance ... Where the investigation is pending before the investigating judge and the accused's detention on remand has been prolonged in accordance with paragraph 1, the investigating judge must transmit the file to the prosecutor thirty days before the date on which the maximum period of detention on remand provided for in this paragraph is due to expire. The prosecutor shall forward the file to the Indictment Division, together with a reasoned proposal, within fifteen days. In all other cases the competent prosecutor must submit to the Indictment Division having jurisdiction, at least twenty-five days before the date on which the maximum period of detention on remand provided for in this paragraph, or an extension period previously ordered, is due to expire, a proposal calling for the detention order to be either extended or discharged. In other respects the provisions of the previous paragraph concerning service on the accused of notice to appear and the obligation to hear the accused and the prosecutor shall apply."

33. Where there are concurrent offences constituted by the same act or where an offence has been committed by a number of acts carried out over a period of time (continuous offence), the periods laid down in Article 287 are calculated from the date of the first order remanding the accused in custody for one of the concurrent offences or for one of the acts constituting the continuous offence (Article 288). On the other hand, where the accused is charged in respect of separate acts constituting separate offences, the time-limit for detention in respect of each of the offences concerned is specific and Article 288 is not applicable.

34. Where the accused's detention on remand is prolonged after his committal for trial, the competent Indictment Division may place him under judicial supervision at his or the prosecutor's request or even of its own motion (Article 291 para. 1).

2. Provisions relating to the procedure before indictment divisions

35. In accordance with Article 306 of the Code of Criminal Procedure, the deliberations of indictment divisions are not public. Decisions are taken by a majority, after the prosecutor has been heard and has withdrawn (Article 138).

36. The investigating judge must inform the parties when the investigation has been closed and transmit the case file to the prosecutor. The parties may then request the prosecutor - even orally - to provide them with a copy of the submissions he intends to make to the Indictment Division. If they make such a request, the prosecutor is required to serve notice on them within twenty-four hours inviting them to appear before him for that purpose. From that time onwards the parties may seek leave to appear in person before the Indictment Division. If, on the other hand, they do not request a copy of the submissions, the prosecutor is discharged from any obligation to serve notice on them. However, his written submissions are filed at the public prosecutor's office and the parties may inspect them even if, in the meantime, the submissions have been sent to the Indictment Division (Article 308).

The Court of Cassation has held that an application for leave to appear in person must be lodged not later than the deliberations of the Indictment Division at which the prosecutor makes his submissions (Court of Cassation, judgments nos. 187/81 and 1813/81).

37. The Indictment Division's powers, after the end of the investigation, are governed by Article 309, which provides:

> "1. The Indictment Division may (a) rule that there is no case to answer; (b) permanently discontinue the criminal proceedings; (c) suspend the criminal proceedings, but only for the crimes of murder, robbery with violence, extortion, theft ... or arson; (d) order further investigative measures; or (e) commit the accused for trial at the competent court.

2. On receipt of an application for leave to appear from one of the parties, an Indictment Division must order the parties' appearance so that they may provide in the presence of the prosecutor any necessary clarifications. It may, in addition, give counsel leave to present argument on the case orally. The Indictment Division may also make such an order or give such leave of its own motion. It may not reject an application for leave to appear except for precise reasons which must be explicitly set out in its decision. Where it orders the appearance of one of the parties, it must also summon and hear the other ..."

The reasons for which indictment divisions may dismiss applications for leave to appear are a matter for their discretion and have been laid down in case-law. The Government cite in their memorial the examples of the danger of disorder, the risk of the accused's escape or his ill-treatment at the hands of the public, the impossibility of a rapid transfer, etc. However, the majority of applications for leave to appear (99%, according to certain estimates) are refused on the ground that the accused has had a sufficient opportunity to set out his arguments in his pleading. Nevertheless, it is established case-law that a rejection for reasons not explicitly set out is null and void under Article 171 para. 1 (d).

38. An Indictment Division commits the accused for trial when it considers that there is sufficiently cogent evidence to support a charge alleging a specific offence (Article 313). At the same time, if the accused is still detained, it decides whether he should remain in detention or be released (Article 315 para. 1).

3. Judgment no. 334/1982 of the Athens Court of Appeal

39. In judgment no. 334/1982, to which the prosecutor referred in his submissions of 5 February 1991 opposing Mr Kampanis's application for leave to appear (see paragraph 22 above), the Court of Appeal held:

"... the accused's right to seek leave to appear before the Indictment Division in order to clarify his argument exists ..., after the investigation has been closed and until adoption of the final decision, only in those cases specifically provided for by law, such as review of the length of detention on remand (Article 287 of the Code of Criminal Procedure). It follows that an application for leave to appear in person lodged by an accused person seeking to have his detention on remand terminated or to be placed under judicial supervision is inadmissible. Moreover, it was not possible under the previous legislation ... where the Indictment Division was considering an application for release ... That is evident more particularly from (a) the title under which Article 309 of the Code of Criminal Procedure appears, namely 'Jurisdiction of the Indictment Division after the investigation has been closed', (b) the position of paragraph 2 of that Article just after paragraph 1, which lists the circumstances in which the Indictment Division has to rule on the merits of a case, (c) the fact that whereas the appearance of the accused or their counsel is provided for by Article 287 - which governs matters relating to the maximum limits of detention on remand - it is not provided for by Articles 284, 285, 286 and 291 ..., and (d) the purpose of Article 309 para. 2 ..., which gives each of the parties the opportunity to present argument to the Indictment Division clarifying, or providing further particulars of, the case before the court. But that opportunity is only conceivable where the Indictment Division has to rule on the merits of a case. Adversarial argument before the Indictment Division

concerning an application to substitute judicial supervision for detention on remand is moreover inconceivable ... That being the case, the appeal before the court is not provided for by law and must be rejected as inadmissible."

PROCEEDINGS BEFORE THE COMMISSION

40. Mr Kampanis applied to the Commission (application no. 17977/91) on 7 March 1991. Relying on Article 5 paras. 1 and 3 (art. 5-1, art. 5-3) of the Convention, he complained that his detention on remand was unlawful and had exceeded a "reasonable time". He further alleged a failure to observe the principle of equality of arms before the Indictment Division of the Court of Appeal, which had infringed his right to take proceedings before a court, as secured in Article 5 para. 4 (art. 5-4).

41. On 5 May 1993 the Commission declared this last complaint admissible in so far as it concerned the proceedings before the Indictment Division that had ended after 7 September 1990. It declared the remainder of the application inadmissible.

In its report of 11 January 1994 (Article 31) (art. 31), it found a violation of Article 5 para. 4 (art. 5-4), but only in the proceedings concerning the application for release made on 30 January 1991.

The full text of the Commission's opinion is reproduced as an annex to this judgment[3].

FINAL SUBMISSIONS TO THE COURT

42. In their memorial the Government asked the Court to

"reject the application of Mr S. Kampanis ... and hold that the applicant was not a victim of a violation of Article 5 para. 4 (art. 5-4) of the Convention".

[3] Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 318-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. SCOPE OF THE CASE

43. In its decision on the admissibility of the application the Commission declared Mr Kampanis's complaint under Article 5 para. 4 (art. 5-4) of the Convention admissible in so far as it concerned the proceedings before the Indictment Division of the Court of Appeal that ended after 7 September 1990. However, neither in that decision nor in its opinion did the Commission examine the proceedings relating to the application for release lodged by the applicant on 18 September 1990 (see paragraph 19 above), that is to say after the date mentioned above.

44. The Court is vested with full jurisdiction within the limits of the case as referred to it and is competent, inter alia, to take cognisance of any question of fact which may arise in the course of consideration of the case; it remains free to make its own assessment of the findings in the Commission's report and, where appropriate, to depart from them, in the light of all the material which is before it or which, if necessary, it obtains (see, among other authorities, the Kraska v. Switzerland judgment of 19 April 1993, Series A no. 254-B, p. 47, para. 22).

45. The Court notes that in his application to the Commission Mr Kampanis complained of all the proceedings concerning him, but he did so in general terms without identifying individual sets of proceedings. Moreover, it does not appear from the file before the Court that his application for release of 18 September 1990 was accompanied by an application for leave to appear in person.

It follows that it is not necessary for the Court to consider this aspect of the case of its own motion.

II. ALLEGED VIOLATION OF ARTICLE 5 PARA. 4 (art. 5-4) OF THE CONVENTION

46. The applicant relied on Article 5 para. 4 (art. 5-4) of the Convention, which provides:

> "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."

47. According to the Court's case-law, the possibility for a prisoner "to be heard either in person or, where necessary, through some form of representation" features in certain instances among the "fundamental guarantees of procedure applied in matters of deprivation of liberty" (see the Sanchez-Reisse v. Switzerland judgment of 21 October 1986, Series A no.

107, p. 19, para. 51). That is the case in particular where the prisoner's appearance can be regarded as a means of ensuring respect for equality of arms, one of the main safeguards inherent in judicial proceedings conducted in conformity with the Convention.

48. The applicant alleged that he had not been afforded this equality of arms before the Indictment Division of the Athens Court of Appeal, in that he had been refused leave to appear in person before it, whereas the prosecutor had been heard.

49. The Court observes that only three applications for leave to appear can be taken into account: the first of these was the one lodged by Mr Kampanis on 18 December 1990 during the committal proceedings (see paragraph 23 above); the second and third were the ones lodged on 30 January and 29 March 1991 at the same time as his applications for release (see paragraphs 20 and 25 above).

However, in order to ascertain whether the applicant was actually adversely affected by the situation he complained of, the Court must take account of the state of the proceedings at the relevant time, and of his previous applications for release.

A. The application of 18 December 1990

50. The Court notes that under Article 309 para. 2 of the Code of Criminal Procedure the accused is entitled to appear if he so requests (see paragraph 37 above). To be admissible, such a request must be lodged as soon as the accused has received a copy of the prosecutor's submissions or has consulted them at the public prosecutor's office, and at the latest by the time of the Indictment Division's deliberations at which the prosecutor makes his oral submissions (Article 308 and case-law of the Court of Cassation - see paragraph 36 above).

51. In this case, however, the applicant requested leave to appear on 18 December 1990, although the prosecutor had been heard on 17 September 1990. The Indictment Division rightly noted this in its decision of 26 February 1991 (see paragraph 24 above).

The Court considers that, as Mr Kampanis did not comply with the time-limit laid down by the relevant national law on this question, he cannot complain of an infringement of the principle of equality of arms in connection with these proceedings.

B. The application of 30 January 1991

52. The Government contended that the Indictment Division's rejection of the application of 30 January 1991 was entirely justified and did not infringe the applicant's rights; as he had presented his arguments in writing and in detail, there was no longer any need for oral clarification. Moreover,

it was wrong to deal separately with the different sets of proceedings to which Mr Kampanis's applications for release had given rise; these applications should be taken as forming part of a single procedure, since they all had the same object and were based on the same facts and the same arguments.

53. The Court notes that Mr Kampanis lodged his application for leave to appear on 30 January 1991, although the investigation had been closed since 11 June 1990 and the file had been before the Indictment Division since 5 September 1990. At that time the Indictment Division was shortly due to decide whether to commit him for trial and whether to extend his detention or order his release (see paragraphs 15 and 38 above).

Article 309 para. 2 of the Code of Criminal Procedure, previously cited, gives an accused the right to provide oral clarifications to the Indictment Division (see paragraph 37 above). According to the case-law of the Greek courts - which was moreover relied on by the prosecutor when he called for the rejection of the application in issue - the accused can be given leave to appear only when the court is preparing to give a ruling on one of the courses of action listed in paragraph 1 of the same Article, or in one of the cases specifically provided for by law, in particular by Article 287 of the Code of Criminal Procedure (see paragraph 39 above).

Moreover, at the material time, whereas Article 287 para. 1 permitted the accused's appearance when detention was to be prolonged for an initial six-month period (in the case of offences classified as serious crimes), Article 287 para. 2, which applied to the applicant's case, contained no similar provision where detention was to be prolonged for a further period in exceptional circumstances (see paragraph 32 above). In his application for release of 5 July 1990 - which falls outside the scope of the Court's review - the applicant criticised this lacuna in Greek legislation and requested to be given the benefit of the more favourable provision contained in Article 287 para. 1 (see paragraph 17 above).

The Court further observes that Article 287 para. 6, in force at the material time, and the present version of Article 287 para. 2 both make provision for the accused's appearance (see paragraph 32 above). Nevertheless, when the Court questioned those appearing before it at the hearing, they gave no convincing explanation as to why Article 287 para. 6 was not applied in the present case.

54. On 5 February 1991 the prosecutor filed his written submissions requesting the Indictment Division to refuse Mr Kampanis's applications for release and for leave to appear in person; he presented oral argument in support of those submissions the next day (see paragraph 21 above). The Indictment Division ruled accordingly on 13 February (see paragraph 22 above), although the applicant had not seen the prosecutor's submissions and had consequently not been able to reply to them either in writing or orally.

At the hearing on 21 February 1995 the Delegate of the Agent of the Government admitted, firstly, that at that stage the accused was not entitled under the Code of Criminal Procedure to request a copy of the prosecutor's submissions or to receive them automatically and, secondly, that the accused could request a copy of the record of the prosecutor's oral submissions after the Indictment Division had given its decision.

55. The Government maintained, however, that these circumstances were not a sufficient basis for finding an infringement of the principle of equality of arms. They argued that the prosecutor's role was not that of a "party" to the proceedings, but that of an impartial organ whose task was to assist the judges to discover the truth and apply the law. After setting the prosecution in motion, he merely provided "the necessary counterweight to the unilateral arguments of the defence".

56. The Court must bear in mind that the prosecutor essentially represents the interests of society in criminal proceedings. In connection with the application in issue, his task was to suggest to the Indictment Division either that the accused's detention be prolonged or that he be released. In the instant case he always submitted that detention should be prolonged.

57. Secondly, the Court acknowledges that the applicant filed a number of applications for release and a number of pleadings in support of them, both during the investigation and even after it had been closed. His arguments, which mostly concerned the legal classification of the offences he was accused of and the reasons given for his detention, were undoubtedly known to the prosecutor and the Indictment Division.

However, when he lodged the application in question, Mr Kampanis had been in prison for twenty-five months and ten days pursuant to three successive orders, each of which fixed a different starting-point for the calculation of his detention on remand; in two of these cases detention had been prolonged up to the maximum permitted under the Constitution. Moreover, in this particular application he criticised, inter alia, the incompatibility of the length of his detention with the Constitution and the Convention.

58. In the light of these considerations, the Court is of the view that to ensure equality of arms it was necessary to give the applicant the opportunity to appear at the same time as the prosecutor so that he could reply to his arguments.

As they did not afford the applicant an adequate opportunity to participate in proceedings whose outcome determined whether his detention was to continue or to be terminated, the Greek rules in force at the material time, as applied in the instant case, did not satisfy the requirements of Article 5 para. 4 (art. 5-4).

59. It follows that there was a breach of Article 5 para. 4 (art. 5-4) in the proceedings concerned.

C. The application of 29 March 1991

60. The Court notes at the outset that the Indictment Division of the Court of Appeal gave Mr Kampanis and his lawyer leave to appear before it on 16 April 1991 while the prosecutor was present and gave them until 23 April to file further observations (see paragraph 26 above).

61. Like the Government and the Commission, the Court considers that no breach of Article 5 para. 4 (art. 5-4) has been established.

III. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

62. Under Article 50 (art. 50) of the Convention,

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

Under this provision the applicant claims reparation for damage and reimbursement of his costs and expenses.

A. Damage

63. The applicant claimed that he had sustained pecuniary loss on account of his - allegedly unlawful - imprisonment after expiry of the twelve months provided for in Article 6 para. 4 of the Constitution (see paragraph 31 above); he put this loss at 21 million drachmas (GRD), on the basis of the salary he would have received during this period as chairman and managing director of EVO. In addition he alleged non-pecuniary damage in respect of which he sought GRD 20 million.

64. The Government argued that Mr Kampanis's claims under these heads should be rejected.

65. The Delegate of the Commission did not express an opinion.

66. The Court does not perceive any causal link between the breach of Article 5 para. 4 (art. 5-4) of the Convention and the pecuniary damage alleged.

As for non-pecuniary damage, it considers that the finding of a violation constitutes sufficient just satisfaction.

B. Costs and expenses

67. The applicant requested reimbursement of the costs and expenses incurred in the proceedings in Greece and then at Strasbourg, but left the amount to the Court's discretion.

68. The Government stated that they were prepared to pay the costs actually incurred by the applicant in connection with his application for release of 30 January 1991, in so far as they were absolutely necessary and reasonable as to quantum. With regard to the proceedings before the Convention institutions, they pointed out that there had been no hearing before the Commission.

69. Having regard to the conclusion it reached in paragraph 59 of the judgment and to its case-law on the question, the Court considers it reasonable to award the applicant GRD 1,400,000.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a breach of Article 5 para. 4 (art. 5-4) of the Convention as regards the proceedings relating to the application for release of 30 January 1991;

2. Holds that there has been no breach of Article 5 para. 4 (art. 5-4) as regards the proceedings relating to the application lodged on 18 December 1990 during the committal proceedings and the application for release made on 29 March 1991;

3. Holds that the present judgment in itself constitutes sufficient just satisfaction in respect of the alleged non-pecuniary damage;

4. Holds that the respondent State is to pay the applicant, within three months, 1,400,000 (one million four hundred thousand) drachmas for costs and expenses;

5. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 13 July 1995.

Rolv RYSSDAL
President

For the Registrar
Vincent BERGER
Head of Division in the registry of the Court