



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

COURT (CHAMBER)

CASE OF BIZZOTTO v. GREECE

(Application no. 22126/93)

JUDGMENT

STRASBOURG

15 November 1996

In the case of Bizzotto v. Greece¹,

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 A², as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr F. GÖLCÜKLÜ,

Mr F. MATSCHER,

Mr C. RUSSO,

Mr J. DE MEYER,

Mr N. VALTICOS,

Mr J.M. MORENILLA,

Mr K. JUNGWIERT,

Mr E. LEVITS,

and also of Mr H. PETZOLD, Registrar, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 28 August and 28 October 1996,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 13 September 1995, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 22126/93) against the Hellenic Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Carlo Bizzotto, on 15 June 1992.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Greece recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 5 para. 1 of the Convention (art. 5-1).

¹ The case is numbered 76/1995/582/668. 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) (1 October 1994) 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) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30). The Italian Government, having been informed by the Registrar of their right to intervene (Article 48 (b) of the Convention and Rule 33 para. 3 (b)) (art. 48-b), did not indicate any intention of so doing.

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. 4 (b)). On 29 September 1995, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr F. Matscher, Mr B. Walsh, Mr C. Russo, Mr J. De Meyer, Mr J.M. Morenilla and Mr K. Jungwiert (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43). Subsequently Mr E. Levits, substitute judge, replaced Mr Walsh, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Greek Government ("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 Government's memorial on 23 May 1996 and the applicant's memorial on 29 May 1996.

On 9 January 1996 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 26 August 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr P. GEORGAKOPOULOS, Senior Adviser, Legal Council of State,	<i>Delegate of the Agent,</i>
Mrs K. GRIGORIOU, Legal Assistant, Legal Council of State,	<i>Adviser;</i>

(b) for the Commission

Mr M.P. PELLONPÄÄ,	<i>Delegate;</i>
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(c) for the applicant

Mr A. ACCOLTI GIL, Mr G. CARDINI, both of the Florence Bar,	<i>Counsel.</i>
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The Court heard addresses by Mr Pellonpää, Mr Accolti Gil and Mrs Grigoriou.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

A. The applicant's conviction for drug trafficking

6. On 4 March 1990 Mr Bizzotto was arrested in transit at Athens Airport while in possession of 3.5kg of cannabis which he had purchased in Islamabad (Pakistan) for 1,000 US dollars. He was detained pending trial in Korydallos Prison, Athens.

7. On 6 May 1991 the Athens Court of Appeal, sitting as a first-instance criminal court with three judges (Trimeles efetio kakourgimaton), held as follows (in judgment no. 986/1991):

"The Court finds the defendant guilty of having deliberately and as a drug addict (a) purchased in Islamabad, Pakistan, on 1 March 1990 approximately 3.5kg of Indian hemp from persons unknown for the sum of 1,000 US dollars (b) brought the said cannabis from Karachi (Pakistan) to Athens by plane on 4 March 1990, (c) imported it into Greece on 4 March 1990 and (d) had it in his possession, wrapped in the lining of an anorak, at Athens Airport on 4 March 1990. The stratagems the defendant used to hide and transport this cannabis, the ease with which he travelled on several occasions to Pakistan, Thailand and other eastern countries and obtained cannabis in Pakistan, the connections which he has in that country, his knowledge of how strict customs security measures are in different countries, his previous convictions for drug-related offences, and the large quantity of cannabis he purchased for resale, show him to be particularly dangerous."

It sentenced him to eight years' imprisonment and a fine of two million drachmas. In addition, it suspended his civic rights for five years and ordered that he be permanently prohibited from re-entering the territory after his release. Lastly, it ordered his placement in an appropriate centre to receive treatment for his drug addiction (under section 14 of Law no. 1729/1987 - see paragraph 15 below).

8. On 22 October 1992, on an appeal by the applicant, the Athens Court of Appeal sitting with five judges (Pentameles efetio) upheld the judgment of the court of first instance (see paragraph 7 above) but reduced the sentence to six years' imprisonment and a fine of one million drachmas (judgment no. 1003/1992). It also ordered "the defendant's placement in an appropriate prison or in a State hospital where he can receive treatment for drug addiction".

However, Mr Bizzotto was never admitted to any such institution; he served his sentence in Patras Prison.

In a letter of 26 November 1992 the public prosecutor notified the governor of Patras Prison of the Court of Appeal's decision and indicated that the part of the judgment dealing with the applicant's placement in a prison with medical facilities did not apply as no such institutions existed.

However, he added that he would contact the governor if such an institution opened before Mr Bizzotto finished serving his sentence.

B. The applicant's four requests to be released on licence

9. While detained at Patras Prison the applicant made four applications to the Patras Criminal Court (Trimeles plimmeliodikio) to be released on licence; three of them were made before the Athens Court of Appeal sitting with five judges had delivered its judgment (see paragraph 8 above).

1. The first application

10. In his first application, made on 4 December 1991, Mr Bizzotto maintained that he had been cured and had ceased to be at all dependent on drugs during his long stay in prison and after medical treatment. He also stated that he had a wife and family, that he owned a profitable farm in Italy and that he was determined not to reoffend in future. He requested his release on licence under section 23 of Law no. 1729/1987 (see paragraph 15 below).

In a decision (no. 595/1992) of 3 February 1992 the Patras Criminal Court dismissed the application.

It began by noting that it was objectively impossible to admit drug addicts to treatment centres as no such centres existed.

It added:

"It is apparent from sections 14 and 23 of Law no. 1729/1987 ... that a person who has been convicted under that Law and has been found to be a drug addict must be placed in an appropriate prison or in a State hospital for special treatment. The placement cannot last for less than a year. During the period of treatment, the convicted person is examined periodically in order to establish whether he has been cured or whether the placement must continue. Periodic reviews begin after one year and are carried out by the court either of its own motion or on an application by the prosecution. If the court ... considers - after studying the relevant expert's report - that the accused has been cured, it orders his discharge from the centre; if the term of imprisonment to which he has been sentenced is longer than the period of treatment, the prisoner is returned to prison to serve the remainder of his sentence. In that case, if the court considers that there is no serious reason why the prisoner should serve the remainder of his sentence, it orders his release on licence. ... Persons who have become habitual users of drugs and are unable to give up the use of them voluntarily - in other words 'drug addicts' - are patients and are treated as such under section 23. It is to be noted that the Greek legislation in force ... does not use the scientifically accepted term of 'drug addict' but the expression 'user of narcotic substances subject to special treatment' (section 13 (1) of Law no. 1729/1987) ... The release on licence of persons convicted under Article 105 of the Criminal Code should not be confused with the discharge of convicted drug addicts under the provisions of section 23 of Law no. 1729/1987. In the first case the aim pursued is solely that of rehabilitation, whereas in the second case it is also therapeutic ... For an application to this end by a convicted person to be admissible it is a prerequisite that (a) he has been placed in a centre to receive treatment for drug addiction and (b) he has spent at least one year in

such a centre and is considered cured ... A problem arises where a convicted person has never been admitted to such a centre. In that case, section 23 does not apply, because the procedural requirement will not have been satisfied. Such a person is deprived of his right to make such an application, which will accordingly be inadmissible. This is not affected by his alleged recovery in prison while serving his sentence. The fact that the prison psychiatrist has certified that he has been cured is of no avail. On the other hand, it raises serious questions and doubts as to the objectiveness of the findings in the psychiatric reports made during the investigation and taken into account by the relevant courts. Although these persons are described as 'drug addicts' ... in these reports, within a few months they are regarded as 'completely cured' after non-existent treatment and merely taking aspirin or Hypnostedon.

...

Besides, the essential requirements for an application to be admissible are that the convicted person has made a full recovery and that there is no serious reason why he should serve the remainder of his sentence. ... In order to make a finding that there is a 'serious reason', it is necessary to have regard to the criteria laid down in Article 106 para. 1 of the Criminal Code. It appears from the case file that the applicant does not satisfy the essential conditions laid down by law, in particular as regards his complete cure. In view of his antecedents ... and character, it is unlikely that the applicant will lead an honest life on leaving prison as he shows a marked tendency to commit drug-related offences."

2. The second application

11. On 5 February 1992 the applicant made a second application for release on licence, in which he essentially repeated the same arguments as he had put forward in the first (see paragraph 10 above).

On 27 February 1992 the Patras Criminal Court dismissed the application (in decision no. 1119/1992) in the following terms:

"The court is not convinced either from the documentary evidence or from the applicant prisoner's personal attendance before it that he is totally cured of his dependence on drugs. He has not been admitted to an appropriate treatment centre and the treatment in Patras Prison is insufficient to cure him of an addiction acquired over a very long period of drug use. In addition, no prison psychiatrist's certificate as to the progress of his treatment has been produced ..."

3. The third application

12. On 4 March 1992 the applicant made a third application, supported by psychiatric certificates of his recovery. He sought to benefit from the provisions of section 23 of Law no. 1729/1987 (see paragraph 15 below).

At the hearing he admitted that he had "been taking drugs" since the age of 19 and had even taken heroin in the past. However, he said that he had managed to cure himself of his drug addiction whilst in prison, where conditions were not conducive, and added that, if his imprisonment were to continue, his condition would get worse.

In a decision (no. 2694/1992) of 27 May 1992 the Patras Criminal Court reached the following conclusions:

"The prison doctor's diagnosis is not sufficient to prove that the applicant has recovered. The latter's application is inadmissible since he has not been admitted to an appropriate prison similar to the psychiatric clinic at Korydallos Prison. Furthermore, at the time of the application the applicant had served two years, one month and twenty-six days of his sentence and there is a serious reason for his serving the remainder, especially as his criminal record shows that in 1974 he was sentenced by the Athens Assize Court to three years' imprisonment for a drug-related offence."

13. In a letter of 9 June 1993 the Minister of Justice, replying to an application by Mr Bizzotto to be placed in a treatment centre for drug addicts, informed him that there was no such centre inside the prison.

4. The fourth application

14. On 15 December 1993 the applicant made a fourth application for his release on licence, relying on Articles 105 and 106 of the Criminal Code (see paragraph 16 below). He said that he had served three-fifths of his sentence and had been of exemplary conduct throughout his time in prison. He was no longer addicted to drugs and was therefore no longer a danger to society; his continued detention would be harmful to him and could no longer be justified.

On 11 February 1994 the Indictments Division (Symvoulio plimmielodikon) of the Patras Criminal Court granted his application. It found that he had already served four years and fourteen days of his sentence - that is to say more than half of the sentence imposed and more than the one-year minimum (Article 105 of the Criminal Code) - and that during his time in prison he had been of good conduct, had shown repentance, had complied with prison regulations and had not incurred any disciplinary penalties.

II. RELEVANT DOMESTIC LAW

A. Law no. 1729 on the prevention of drug trafficking, the protection of young persons ... of 3 and 7 August 1987

15. The relevant provisions of Law no. 1729/1987 are as follows:

Section 3

"(1) The prevention of pharmaceutical dependence on narcotic substances within the meaning of section 4 of this Law shall be organised at three levels:

- (a) preventive information;
- (b) treatment;
- (c) reintegration into society.

(2) For the purposes of implementing this programme, there shall be set up by joint decisions, published in the Official Gazette, of the Minister of Health, Welfare and Social Security and the Minister competent in each given case:

- (a) ...
- (b) special drug-addiction units and prisons with medical facilities;
- (c) ..."

Section 5

"(1) A term of imprisonment of at least ten years and a fine of between 100,000 and 100,000,000 drachmas shall be imposed on anyone who:

- (a) imports or exports drugs or causes them to transit through Greece;
- (b) sells or buys drugs or makes them available in any way whatsoever to third parties or acts as an intermediary or stores drugs or puts drugs into storage;

...

(g) possesses or transports drugs in any manner and by any means whatsoever, either on Greek territory or alongside or across territorial waters or in Greek airspace; ..."

Section 8

"Anyone who commits any of the offences referred to in sections 5, 6 and 7 shall be liable to life imprisonment if he is a reoffender or if he acts by way of occupation or habitually or if he has acted with a view to causing minors to use drugs or if the circumstances in which the offences were committed show him to be particularly dangerous."

Section 12

"(1) Anyone who solely for their own use obtains or possesses by any means whatsoever a small quantity of drugs or uses drugs shall be liable to imprisonment. The sentence shall be served in a special prison with medical facilities.

(2) If any person using drugs as stated in subsection (1) has not been finally convicted of another offence under this Law and does not show any symptoms of dependence on narcotic substances, the court, having regard to the particular circumstances of the case and the personality of the convicted person, shall, instead of imposing the sentence referred to in subsection (1), order that the convicted person follow a consultation and support programme determined by the Minister of Health, Welfare and Social Security ... at the medical centres in each prefecture, at clinics or other similar institutions. If the convicted person does not comply with the order, the court shall order his placement in an appropriate institution to follow the same programme."

Section 13

"(1) Persons who have become habitual users of drugs and cannot give up the use of them voluntarily shall receive special treatment in accordance with the provisions of this Law.

(2) The court shall determine whether the conditions referred to in the preceding subsection are met in the case of the accused or convicted person after an examination at a specialist treatment centre for drug addicts ...

(3) An offender to whom all the conditions set out in subsection (1) apply shall, if found guilty of

(a) the offence under section 12 (1), not be punished, but will be subject to the application *mutatis mutandis* of the provisions of the second paragraph of section 14 (1) of this Law;

(b) the offences referred to in sections 5, 6 or 7, be liable to at least three months' imprisonment and a fine of between 50,000 and 10,000,000 drachmas; ...

(c) the acts referred to in section 8, be liable to a maximum of ten years' imprisonment and a fine of between 1,000,000 and 200,000,000 drachmas."

Section 14

"(1) Any offender in respect of whom the conditions set out in section 13 (1) and (2) of this Law are met and who has been detained pending trial in accordance with the Code of Criminal Procedure or who has been convicted of any offence whatsoever shall be placed in an appropriate prison with medical facilities. If he is held not to be criminally responsible under Article 34 of the Criminal Code, he shall be placed in a State hospital. In both cases he shall be subject to a special treatment programme determined by the Minister of Health, Welfare and Social Security.

(2) Where a person is sentenced to a term of imprisonment, any time spent in hospital shall be reckoned as time served in prison."

Section 23

"(1) If an offender's period of hospitalisation under section 14 exceeds one year, which is the minimum period of treatment, the head of the institution in which he has been placed shall at the end of each year make a report on the progress of his treatment to the public prosecutor at the Criminal Court for the place where the sentence or preventive measure is to be carried out and shall indicate whether the convicted person should remain in the institution. On the basis of this report the Criminal Court, sitting with three judges, shall decide whether detention should continue. The court, which may also order an expert's report under section 13 (2), shall make a final decision whether detention in hospital should continue.

(2) If a person detained in a hospital has recovered and was found not to be criminally responsible under Article 34 of the Criminal Code, the court shall order his release on an application by the public prosecutor. If part of his sentence remains to be served, the court shall decide whether there is a serious reason why he should serve the remainder, but otherwise shall order his release on licence. The conditions attached to his release may concern his way of life, and in particular his place of residence, and include an obligation to attend the clinic, special drug-addiction centre or general hospital nearest to his place of residence whenever requested to do so for the purposes of checking that the conditions are being complied with ...

(3) If the person detained is not released under the preceding subsection, the court shall decide at the end of each year, on application by the detained person himself, the director of the institution in which he is detained or the public prosecutor, whether he should be released.

..."

B. Criminal Code

16. Articles 105 para. 1 and 106 of the Criminal Code provide:

Article 105 para. 1

"Anyone who has been sentenced to a term of imprisonment may, after serving two-thirds of his sentence and in any event at least one year or, in the case of a life sentence, twenty years, be released on licence in accordance with the following provisions."

Article 106

"(1) A prisoner shall only be released on licence if he has been of good conduct while serving his sentence, has performed as far as possible his obligations towards the victim ... and if his antecedents, his personal and social circumstances in general and his character ... give cause for hope that he will lead an honest life in the future.

(2) The prisoner may be required to comply with certain obligations relating to his way of life and in particular his place of residence. These obligations may at any time be withdrawn or varied on application by the prisoner.

..."

C. Code of Criminal Procedure

17. Article 565 of the Code of Criminal Procedure provides:

"Doubts as to the nature or length of the sentence Any doubt or objection as to the execution of the judgment or as to the nature or length of the sentence shall be decided by the Criminal Court for the district where the sentence is to be served. The public prosecutor or the convicted person may appeal to the Court of Cassation on points of law against such a decision."

D. The Minister of Justice's circular of 23 September 1992

18. In a circular of 23 September 1992 the Minister of Justice informed the public prosecutors at the courts of appeal and the courts of first instance and prison governors that there were no prisons with medical facilities in Greece as mentioned in section 14 of Law no. 1729/1987. Consequently, it was not possible to implement court orders directing that drug addicts be placed in such prisons under that section.

PROCEEDINGS BEFORE THE COMMISSION

19. Mr Bizzotto applied to the Commission on 15 June 1992. He alleged a violation of Article 5 para. 1 of the Convention (art. 5-1) for

failure to place him in an appropriate centre to receive treatment for his drug addiction.

20. On 2 December 1994 the Commission declared the application (no. 22126/93) admissible. In its report of 4 July 1995 (Article 31) (art. 31), it expressed the opinion by eight votes to seven that there had been a violation of that Article (art. 5-1). The full text of the Commission's opinion and of the two dissenting opinions contained in the report is reproduced as an annex to this judgment³.

FINAL SUBMISSIONS TO THE COURT

21. In their memorial the Government invited the Court to "dismiss Carlo Bizzotto's application in its entirety".

22. The applicant requested the Court to hold

"(1) that there was not a lawful detention after conviction by a competent court as required by the wording of Article 5 para. 1 (a) of the Convention (art. 5-1-a), since there was a clear contrast between the detention the applicant was sentenced to by the Greek court and the detention he actually served;

(2) that the applicant's continuous detention for four years and fifteen days in an ordinary prison, although he was a drug addict and therefore entitled to be detained in an appropriate place, constitutes a violation of Article 5 para. 1 (e) read in conjunction with Article 18 of the Convention (art. 18+5-1-e);

(3) that the applicant and his family are entitled to receive compensation for non-pecuniary and pecuniary damage and the costs and losses suffered as a consequence of the recognised violations of the Convention; and

(4) that the Greek Government are to pay appropriate compensation, including legal costs, to the applicant and his family by way of just satisfaction."

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

23. As before the Commission, the Government's main submission was that the application was inadmissible for failure to exhaust domestic remedies and to comply with the six-month time-limit laid down by Article 26 of the Convention (art. 26).

³ For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-V), but a copy of the Commission's report is obtainable from the registry.

A. Failure to exhaust domestic remedies

24. The Government submitted that Mr Bizzotto had failed to exhaust the remedies available to him in Greek law as required by Article 26 of the Convention (art. 26) as he had not brought an action under Article 565 of the Code of Criminal Procedure (see paragraph 17 above) to challenge the manner in which his sentence was to be enforced.

25. The Court points out that Article 26 of the Convention (art. 26) requires only that available and sufficient remedies for the alleged violation be exhausted. An action brought under Article 565 of the Code of Criminal Procedure, however, would not have been effective in the circumstances of the case; when sentencing the applicant, the Athens Court of Appeal, sitting as a court of first instance, also ordered his placement in an appropriate centre to receive treatment for his drug addiction (see paragraph 7 above). However, as the Government said, no centre of that type existed in Greece at the material time. Such an action would therefore have been bound to fail. Consequently, the relevant objection must be dismissed.

B. Failure to comply with the six-month time-limit

26. In addition, the Government invited the Court to dismiss the application under Article 26 of the Convention (art. 26) for failure to comply with the six-month time-limit. Time had in fact started to run, they said, on 6 May 1991 (the date of the decision of the Court of Appeal sitting as a court of first instance) as the applicant's complaint related to the situation created after that decision when he was sent to Patras Prison instead of to a prison with medical facilities.

27. The Court notes that Mr Bizzotto complained of a situation that had begun when he was sentenced by the Athens Court of Appeal sitting as a court of first instance and had continued until his release on 11 February 1994. His complaint was essentially directed at the manner in which judgment no. 986/1991 had been executed. During that period he had made four applications for release on licence; the first three had been based on section 23 of Law no. 1729/1987 and the Patras Criminal Court had dismissed them on the ground that he had not been cured of his addiction (see paragraphs 10-12 above).

By making an application to the Commission on 15 June 1992 (a few days after the dismissal of his third application - see paragraph 12 above), the applicant satisfied the requirement of Article 26 (art. 26) in that regard. The relevant objection must therefore be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 5 PARA. 1 OF THE CONVENTION (art. 6-1)

28. Mr Bizzotto submitted that his detention in Patras Prison had infringed Article 5 para. 1 of the Convention (art. 5-1), which provides:

"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:

(a) the lawful detention of a person after conviction by a competent court;

...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; ..."

The applicant complained of the obvious contrast between the conditions in which the Greek courts had ordered him to be detained and those in which he was in fact held. He had been sent to an ordinary prison without any medical facilities for ensuring the proper execution of his sentence and had received treatment wholly unsuited to him as a drug addict. In the second place, the fact that he was not placed in a treatment centre had prevented him being released on licence under section 23 (2) of Law no. 1729/1987. If he had been cured of his drug addiction, as the Government alleged, the Patras Criminal Court should have ordered his release on licence as there was no serious reason why he should serve the remainder of his sentence; he argued that evidence of this had been provided by the Criminal Court's decision of 11 February 1994 to release him (see paragraph 14 above). On the other hand, if his condition had not improved, as that same court had held on three occasions, it was due to the failure to place him in a suitable centre for treatment.

In either case the applicant's detention was not lawful under sub-paragraphs (a) and (e) of Article 5 para. 1 (art. 5-1-a, art. 5-1-e).

29. The Commission agreed. It expressed the opinion that the applicant's deprivation of liberty did not comply with the measures ordered against him and, referring to the case of *Bouamar v. Belgium* (judgment of 29 February 1988, Series A no. 129), that it was incumbent on the State to provide the infrastructure to meet the requirements of Law no. 1729/1987. While in prison, Mr Bizzotto had been unable to consult a doctor or any qualified nursing staff; the only treatment he appeared to have received had been the occasional dose of sleeping tablets, which could not be considered appropriate treatment for drug addiction.

30. The Government disagreed with those views.

They submitted, firstly, that the requirements of sub-paragraph (a) of Article 5 para. 1 (art. 5-1-a) had been met in the instant case. The applicant had been detained in Patras Prison by virtue of a judicial decision whereby he had been sentenced to a term of eight years in prison, reduced to six

years on appeal. They acknowledged that the institutions mentioned in section 14 of Law no. 1729/1987 did not yet exist in Greece, but maintained that the Convention did not oblige Contracting States to provide special infrastructure and methods to deal with drug-related problems. States were free to adopt whatever measures they considered necessary and choose the most appropriate time for implementing them. Even supposing that treatment centres able to treat Mr Bizzotto had existed at the material time, section 23 gave the courts a discretion to decide whether a drug addict who, like the applicant, had been given a custodial sentence should remain in detention or be released on licence.

The Government alleged, secondly, that sub-paragraph (e) (art. 5-1-e) applied only in circumstances different from those of the instant case, that is to say where a person was detained in a treatment centre without that being objectively required by his condition. In his applications for release on licence, however, Mr Bizzotto had claimed to be totally cured.

31. The Court reiterates that in order to comply with Article 5 para. 1 (art. 5-1), the detention in issue must take place "in accordance with a procedure prescribed by law" and be "lawful". The Convention here refers essentially to national law and lays down 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 aim of Article 5 (art. 5), namely to protect the individual from arbitrariness (see, among many other authorities, the following judgments: *Winterwerp v. the Netherlands*, 24 October 1979, Series A no. 33, pp. 17-18 and 19-20, paras. 39 and 45; *Bozano v. France*, 18 December 1986, Series A no. 111, p. 23, para. 54; and *Bouamar* cited above, p. 20, para. 47).

Furthermore, there must be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention (see the *Ashingdane v. the United Kingdom* judgment of 28 May 1985, Series A no. 93, p. 21, para. 44).

32. The Court finds that the applicant's "detention" was the consequence of his conviction as a drug trafficker. The Athens Court of Appeal sitting as a court of first instance described him as "particularly dangerous" and sentenced him under Law no. 1729/1987 to eight years' imprisonment for having "purchased", "transported", "imported" and "been in possession of" 3.5kg of Indian hemp (see paragraph 7 above). The Athens Court of Appeal sitting with five judges - even though it reduced the sentence to six years - upheld the judgment delivered at first instance (see paragraph 8 above). Contrary to what obtained in the case of *X v. the United Kingdom* (judgment of 5 November 1981, Series A no. 46), a sentence was in fact passed in the instant case for the purposes of punishment. The same court's finding that the applicant was a drug addict and the decision to have him placed - as required by section 14 of Law no. 1729/1987 - in a prison with medical facilities do not in any way affect the main ground for his

"detention". Accordingly, only sub-paragraph (a) of Article 5 para. 1 (art. 5-1-a) applies in the present case.

33. The Court does, of course, recognise the humanitarian nature of the provisions of Law no. 1729/1987 that are curative in purpose and which the applicant alleged had been disregarded by the authorities, namely section 14 - which provides for the setting up of prisons with medical facilities - and section 23, which in certain circumstances allows offenders who are also drug addicts to be released early on licence (see paragraph 15 above). However, it notes that at the material time, that is to say five years after that Law was passed, these provisions remained inoperative, as the Government acknowledged.

34. Nevertheless, in the context of the instant case, the aforementioned sections lay down merely the arrangements for implementing sentences. Although such arrangements may sometimes be caught by the Convention - in particular where they are incompatible with Article 3 (art. 3) - they cannot, in principle, have any bearing on the "lawfulness" of a deprivation of liberty.

35. Consequently, the Court finds that the applicant's detention in the ordinary prison in Patras did not infringe Article 5 para. 1 (art. 5-1).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Dismisses the Government's preliminary objections;
2. Holds that there has been no violation of Article 5 para. 1 of the Convention (art. 5-1).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 15 November 1996.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar