

Breaking THE BARRIERS

TRANSNATIONAL PARTICIPATORY
JUDICIAL TRAINING ON PROCEDURAL RIGHTS

CASE STUDY 2 – Legal aid as an aspect of the right to a fair trial.

Facts

The applicant is a Tanzanian national, born in 1957 and residing in Tanzania. He is a seaman. In 1986 he was convicted to a fixed-term sentence for drug-related offences in Greece. In November 1989 he was released from prison and deported from Greece.

On February 16, 1990, a Mr GC was arrested for drugs transportation at Athens Airport. A telephone number was found on him, which, after tracing, turned out to belong to a hotel in Piraeus, where the applicant, who had returned to Greece, was staying at the time. The police went to the hotel. A forged passport was found in the applicant's possession. However, no drugs or other incriminating evidence appears to have been found on him.

The applicant was arrested and brought before the police in Athens, where he was subjected to questioning. According to his examination report, the applicant claimed that he did not speak Greek, but only English, and for this reason he was assisted by the Hellenic Police officer, HL, who was English-speaking and acted as an interpreter. In the report it is also mentioned that the applicant was asked about the events leading to his arrest and about the forged passport found in his possession. Although he gave full details of his movements after his deportation from Greece three months earlier, he denied any involvement in drug trafficking. The following day, the police questioned him again. The Hellenic Police officer HL performed interpretation duties once again.

On 18 February 1990 the applicant was brought before the Prosecutor, who initiated criminal proceedings against him for forgery and various drug-related offences. The applicant does not dispute the fact that an interpreter was present during those proceedings (before the Prosecutor).

The applicant was then brought before the Investigating Judge, who read the charges against him. The report drawn up on that day indicates that a lawyer who spoke English and acted as an interpreter was present.

On 20 February 1990 the applicant appeared again before the Investigating Judge, to whom he submitted a memorandum. It appears from his plea report drawn up on that day that Mr A, a lawyer from Athens, and an English-language interpreter were present. The Investigating Judge ordered the applicant's remand in custody.

On 21 June 1991 the applicant and three of his co-accused persons appeared before the Athens Three-member Felony Court of Appeal, which appointed an interpreter. The

applicant stated that he was represented by counsel Mr. A and requested an adjournment of the hearing of the case due to lawyers' abstention, in which his lawyer participated. A similar request was made by his co-accused persons. The case was adjourned.

On 12 July 1991 the applicant and his co-accused persons appeared again before the Court and an interpreter was re-appointed. The applicant's lawyer at the time, Mr L, was absent, so the Court asked the defence lawyer of a co-accused person, Mr N, whether he could also represent the applicant. Mr N accepted his appointment and the Court briefly suspended the hearing, in order to allow Mr N to be briefed on the applicant's part of the case.

On 16 July 1991 the Athens Three-member Felony Court of Appeal found the (herein) applicant guilty for drugs importation and trafficking as well as use of forged documents. It imposed on him a sentence of life imprisonment and a monetary penalty of 6,000,000 drachmas for breaches of the Narcotics Act and an eight-month prison sentence for use of forged documents. The (herein) applicant appealed against this judgment.

On 18 March 1993 the appeal was heard before the Athens Five-member Felony Court of Appeal, before which an interpreter was present and the applicant was represented by counsel Mr EL, a lawyer provided by a humanitarian organization. The applicant was found guilty of simple complicity in drugs importation and trafficking and use of forged documents and acquitted of the other charges. He was sentenced with twelve months imprisonment and a monetary penalty of 5,000,000 drachmas for breaches of the Narcotics Act and three months imprisonment for use of forged documents. The judgment was finalized on 4 May 1993. According to the record of the appeal hearing, the President of the Court duly informed all the co-accused persons, including the applicant, of the time limit for filing an appeal on points of law, information which was translated to the applicant.

The applicant filed an appeal on points of law on 26 March 1993, by filling in a form, which he handed to the prison officials. In the relevant section of the form on the grounds for appeal on points of law he indicated that they would be submitted in due course by his lawyer. On the same form, he appointed Mr P as his representative.

On 8 June 1993 the applicant applied to the Prosecutor of the Supreme Court for legal aid in the appeal proceedings, through the prison. On 12 July 1993 the Supreme Court dismissed the appeal on grounds of law as inadmissible for failure to raise grounds for appeal.

On 4 April 1994 the applicant made a second request for legal aid before the Prosecutor of the Supreme Court, referring to his financial situation and asking to be informed of the progress of his appeal proceedings. On 27 April 1994 the applicant was informed by prison officials that his appeal on points of law had been rejected.

In a letter addressed to the State Legal Council (the representative of the Greek Government in the proceedings before the ECtHR), the Deputy Prosecutor of the Supreme Court stated that he could not find any request for legal aid from the applicant to the President or the Prosecutor of the Supreme Court. He also noted that the Court was not obliged by law to provide legal aid (appointment of lawyer) for an appeal on points of law. Therefore, even if

the applicant had indeed submitted a request for legal aid before the Supreme Court, the latter was not obliged to respond to it.

Questions

- 1) Was there a violation of the applicant's right to a fair trial in this case due to the failure to provide him with legal aid in the proceedings of appeal on points of law? If so, what evidence should the Court before which the application for legal aid was submitted have taken into account?
- 2) Would the answer to the first question change if the applicant had already applied for legal aid at first instance?

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