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GREECE

Unfair trials of people arrested at Athens Polytechnic University

I. BACKGROUND TO THE TRIALS

Amnesty International is concerned that many of the students and others arrested at Athens Polytechnic University on 18 November 1995 have been convicted and sentenced to prison in trials which fall short of international standards, including treaty obligations, and requirements of Greek law. Families of those arrested were not immediately informed of the arrests or the location of detainees, detainees were not promptly notified of the charges and in some cases were not brought promptly before a judge. Defendants were not able to cross-examine prosecution witnesses at the trial and the prosecution failed to present, and the court did not cite, evidence of the individual responsibility of defendants to support the conviction of defendants on the charges against them.

From 17 to 23 March 1996 an Amnesty International delegation visited Athens to observe two trials which were part of a case involving approximately 470 defendants. These trials related to the incidents which had occurred at the Athens Polytechnic University on 17 and 18 November 1995.

These incidents took place during and after the commemoration of the events of 17 November 1973 (when the army entered the grounds of the University to stop the students' protest against the military dictatorship then ruling Greece). Every year since a rally has been organized to commemorate the events and clashes have often erupted between police forces and some demonstrators.

On 17 November 1995, in addition to the commemorating rally, two other groups of people were also present inside and near the university: the students of Athens Polytechnic University who had been on strike for several days and who were holding meetings in the buildings of the University discussing their demands about fees and improvements to material conditions with their teachers; and another group of demonstrators who had decided to take advantage of this commemorative day to express their solidarity with an anarchist detainee who was then on hunger-strike in prison.

In the evening of 17 November 1995 violent incidents erupted between demonstrators (from which of the three groups was not determined) and members of the anti-riot police forces, which eventually encircled the whole area and forced a large number of people back inside the University. During the events, a kiosk was destroyed at the nearby bus station and several Greek flags were burnt. The police made several arrests, using violence in some cases, such as in the case of a young boy who was severely beaten.¹

¹ See: Amnesty International *Concerns in Europe, June-December 1995* (AI Index: EUR 01/01/96) for more information.

At about 8am on 18 November 1995 the police, who had then obtained permission from the University authorities to enter the premises,² came in and arrested all the people present, that is a total of about 700 who reportedly offered no resistance.³ Approximately 470 were eventually charged and brought to trial. Accurate reports concerning the extent of property damage, including damage inside Athens Polytechnic University, which occurred during these incidents and the people responsible are not yet available.

II. OVERVIEW OF THE TRIALS

Out of the total of approximately 470 people who were charged, 80 to 90 minors were, in accordance with Greek law, tried separately before the Athens Juvenile Court. Amnesty International has received no information on any complaint filed or allegations of possible irregularities in the proceedings. The minors were sentenced to education measures and community service.

As to the adults, a first group of 126 was brought to trial at various dates in December 1995. As Amnesty International had received information about alleged irregularities in these trials, the organization sent observers to the trials of two other groups of 15 defendants on 19 and 21 March 1996 with a view to assessing if such trials were conducted in accordance with the relevant international human rights standards and national law.

This report is based on a wide variety of sources including the findings of the mission, contacts with relevant court members (judges and prosecutors), defence lawyers, defendants and their relatives, as well as journalists who had covered the previous trials.

III. RELEVANT FAIR TRIAL STANDARDS

Amnesty International assessed the fairness of the trials in the light of a broad framework of international law and standards. These include treaties to which Greece is a party, namely:

- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture);
- The European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights);

They also include a wide body of international standards concerning the right to fair trial recognized in instruments adopted or approved by the United Nations (UN) General Assembly.

² These premises are a "safe enclave" where police or military forces cannot intervene without the specific authorization from the Rector.

³ None of those arrested was charged with resisting arrest.

- the Universal Declaration of Human Rights (Universal Declaration);
- the UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules);
- the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles);
- the UN Basic Principles on the Independence of the Judiciary;
- the UN Guidelines on the Role of Prosecutors;
- the UN Basic Principles on the Role of Lawyers

which, though not in the form of treaties, represent international consensus regarding minimum standards which in all countries and at all times must be observed by governments in the administration of criminal justice.

In addition, although Greece is not a party to the International Covenant on Civil and Political Rights (ICCPR), Articles 9 and Article 14 of that treaty provide what is universally accepted as defining the minimum standards for a fair trial.

National instruments, namely the Greek Constitution, Penal Code and Code of Criminal Procedure, include provisions which confirm and implement the principles recognized in the above international instruments. In some cases, however, national law and practice fall short of international standards.

IV. ARREST, PRE-TRIAL DETENTION AND PRE-TRIAL PROCEDURE

4.1: Arrests

A minority of demonstrators were arrested when violent clashes erupted around the Athens Polytechnic University in the evening of 17 November 1995. Although there had been allegations of ill-treatment by police during the arrests, Amnesty International received no other information on these clashes than the video footage of part of the events in the Athens Polytechnic University which clearly shows a youth who apparently offered no resistance being caught by a group of police officers who beat him with truncheons and kicked him before they moved out of sight of the video camera. Later shots showed him being further beaten by police officers, including one in plain clothes.⁴ Article 12 of the Convention against Torture requires “competent authorities [to] proceed to a prompt and impartial investigation” of complaints of torture or ill-treatment. Amnesty International is not aware of any such investigation into the incident. The organization is still awaiting a response from the Greek Ministry of Public Order to its letter of 13 December 1995 asking for information on the extent of the investigation, the number of officers who have been identified as being involved and the measures taken against them in connection with the findings of the investigation.

After obtaining authorization from the University’s authorities, the police entered the premises at about 8am on 18 November 1995. About 700 people who peacefully surrendered were arrested.

4.2: Pre-trial detention

All the persons arrested at the University on 18 November 1995 were taken to the Athens Police Headquarters on Alexandras Avenue.

The detention facilities at the Athens Police Headquarters are described in pages 26 to 28 of the Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 26 March 1993, dated 29 November 1994. The principal detention facilities, as described in the CPT report, consist of 20 cells of about 12 square metres each, situated on the seventh floor of the building, with some smaller cells on floors 11 and 12. The general state of the detention facilities was described as follows:

“In principle, the cellular accommodation could be considered as acceptable for persons obliged to remain in police custody for a relatively short period, on the condition that the premises are kept clean and those obliged to spend the night in custody are provided with mattresses and blankets... The ventilation would be adequate in the absence of overcrowding... The state of cleanliness and overall state of repair of the toilets and shower facilities was appalling, although an attempt to improve the situation was made between the delegation’s different visits.”

⁴ (See: Amnesty International’s *Concerns in Europe, June-December 1995*, AI Index: EUR 01/01/96 for more information).

The detention facilities, as described above, had to accommodate, in addition to other people who may have been in the cells already, approximately 470 people from the morning of 18 November 1995 until the evening of 20 November 1995. Many detainees were not released until 21 November and some not until 22 November. The facilities were not adequate for such massive detention, either in terms of number and size of the cells or for other facilities such as bedding or toilets. The detainees were divided in groups of 50 to 80 people per floor and placed in all the rooms which could be made available for detention, with the result that all the facilities were rapidly overcrowded. Various sources reported that as a consequence, the detention facilities were largely insufficient to satisfy the elementary need of the detainees for rest or sleep (there was no space for them to lie down, no mattresses or blankets were provided), for hygiene, for a drink (a detainee reported having to “beg for a glass of water”) and food (no food was available until it was provided by families of the detainees during the night of 18 to 19 November 1995).

A number of detainees and lawyers have made allegations of cruel, inhuman or degrading treatment in police custody, although none of the detainees filed a formal complaint. These included beatings, insults and degrading body-searches of women without reasonable grounds. When Amnesty International’s delegates tried to speak to some of the people who had alleged ill-treatment, they declined. Explanations given to the delegates by a number of victims and lawyers were that victims of beatings or ill-treatment by Greek police felt that there was no point for them to lodge a complaint as a police officer being charged with ill-treatment was unlikely, the case would take a long time to be investigated, and would be unlikely to result in a conviction. The victims also feared that the charges against them would be increased or that they would be charged with assaulting the police. Nevertheless, the failure of the victims to make complaints does not excuse the failure of the authorities to conduct prompt and impartial investigations of the ill-treatment in accordance with Article 12 of the Convention against Torture. Amnesty International is not aware of any investigation having been opened.

4.3: Pre-trial procedure

Amnesty International is concerned that those arrested were denied internationally recognized rights, as well as rights recognized in Greek law, during pre-trial detention. Families of detainees were not immediately notified of the arrests and location of those arrested. Those arrested were not promptly informed of the charges upon arrest and, in many cases, were not informed of the charges until after they had been interrogated by the police or presented to the prosecutor. Those arrested were not given prompt access to a lawyer and many of them were not brought promptly before a judge.

Right of immediate notice to one's family and prompt access to them

International human rights standards require that immediate notice of detention be given and that prompt access to the detainee be granted to families of detainees. Rule 92 of the Standard Minimum Rules states:

“An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution”.

Similarly, Principle 16 (1) of the Body of Principles provides that detainees are entitled to notify members of their families about their detention promptly after they are placed in custody. Principles 15 and 16 (4) make clear that even in exceptional circumstances communication with one's family may not be delayed for more than a matter of days, while Principle 19 provides for reasonable access to one's family.

Families of people arrested were not notified of the arrests. As a result of the publicity, especially on the television, concerning the arrests at the Polytechnic University some families took the initiative to go to the Police Headquarters. They were kept waiting outside the building until around midnight on 18 November 1995 before being granted access to the detainees.

Duty to inform the accused of the charges

Internationally recognized standards require that anyone who has been arrested should be informed at the time of the arrest of the reasons for his or her arrest and be promptly informed of any criminal charges against him or her.

Article 5 (2) of the European Convention on Human Rights provides: “Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him”. This requirement is also found in Article 9 (2) of the ICCPR and Principle 10 of the Body of Principles.

According to information received by Amnesty International, the police authorities did not promptly notify the persons arrested of the reasons for their arrest. Moreover, Amnesty International is concerned that interrogations which started several hours after the arrest, were conducted without informing the detainees of the charges against them, despite written statements of their interrogations

saying that this had occurred. In fact, detainees had no effective knowledge of such charges until they were presented to the Public Prosecutor in the evening of 19 November 1995.

Right of prompt access to a lawyer

Article 6 (3) (a) of the European Convention on Human Rights provides that everyone charged with a criminal offence is entitled “to defend himself in person or through legal assistance of his own choosing or if he has not sufficient means to pay for legal assistance to be given it free when the interests of justice so require.” According to Article 14 (3) (b) of the ICCPR the detainee is entitled “to adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing”. Principle 15 of the Body of Principles states that even in exceptional circumstances a detainee’s right “to be visited and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel” as set forth in Principle 18 “shall not be denied for a matter of days”. Principle 7 of the Basic Principles on the Role of Lawyers states that governments must “ensure that all persons arrested or detained, with or without criminal charges, shall have prompt access to a lawyer, and in any case no later than 48 hours from the time of arrest or detention”.

The right for a person arrested or detained to be assisted by a lawyer, to consult and communicate with him, is recognized in Article 100 of the Greek Criminal Procedure Code. Such right is maintained by Article 105 in *flagrante delicto* proceedings.⁵

According to information received by Amnesty International, those arrested were not informed of their right of prompt access to a lawyer and were not permitted to call a lawyer. Moreover, Amnesty International is concerned that when later on 18 November 1995 interrogations started at the Police Headquarters, detainees reportedly were not informed of their right to be assisted by a lawyer, despite the mention of such information and of the waiver of such right in all the statements of interrogations. In reality, several lawyers decided to go to the Police Headquarters where, after the interrogations, at about midnight on 18 November 1995, they were granted the right to see their clients and consult with them for a moment.

Right to prompt presentation before a judge

International human rights standards including Article 9(3) of the ICCPR and Principle 37 of the Body of Principles, require that any person “arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release”.

This principle is recognized by the Greek Constitution and Criminal Procedure Code, which provide that the persons arrested must be brought before the Examining Magistrate (Article 6(1) of

⁵ Crimes in *flagrante delicto* are defined in Article 242 of the Greek Criminal Procedure Code as crimes “at the time they are committed or which were committed recently”. In such cases the police are entitled to carry out an investigation and to arrest and detain persons without prior authorization of the Public Prosecutor.

the Constitution) or the Public Prosecutor (Article 279 of the Criminal Procedure Code) without delay and in any case no later than 24 hours from arrest.

According to information received by Amnesty International the detainees were formally presented to the Public Prosecutor only in the late evening of 19 November 1995, that is about 36 hours after their arrest⁶.

Approximately 260 of them were then released, while 126 were maintained in custody and were released only after they had appeared before the court in *flagrante delicto* proceedings on 20, 21 or 22 November 1995.

⁶ A number of Public Prosecutors came to the Police Headquarters in the afternoon of 19 November 1995. Although their presence brought some independent supervision and control after more than 30 hours of pre-trial detention, this cannot be called: "presentation before a judge", as they did not exercise any judicial power during their visit. For example, even though they were present when new interrogations of some detainees, who had first refused to make statements, were conducted, such interrogations were still conducted by police officers.

V. ORGANIZATION OF THE TRIALS

Amnesty International is concerned that the trials of the adult defendants in this case were organized in a manner which in several instances resulted in unequal treatment of similarly placed defendants. Article 10 of the Universal Declaration provides that “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal”. Article 14 (1) of the ICCPR contains a similar guarantee of the equality of treatment with similarly placed defendants.

The total of approximately 390 adult defendants was divided into two groups:⁷

- The trials of 126 defendants started on 5 December 1995.
- The trials of the remaining defendants were postponed until January 1996.

As explained below, these two groups were divided into sub-groups of 15 to 20 defendants. The resulting trials, with for the second group different chambers with different judges for each of its sub-groups, have been extended over several months.⁸

As indicated below, in these trials there have been many instances of unequal treatment with similarly placed defendants, in the right to examine witnesses, the presumption of innocence and the resulting verdicts.

VI. THE TRIALS PRIOR TO 19 MARCH 1996

Amnesty International is concerned that in many instances these trials did not comply with guarantees of fair trial recognized in international standards, including treaty obligations, as well as in Greek law. Such instances included independence of the judiciary, equality of treatment, assistance by lawyers, examination of witnesses, presumption of innocence and evidence of individual responsibility. The report of these trials is based on a variety of sources including:

- the two written judgments in the trials of groups 1/118 and 2/118⁹ (see definition below);
- interviews with lawyers who assisted the defendants in the trials;
- articles published in the Greek press.

Initial hearings

⁷ Although the criteria for such division were not given, a number of lawyers have indicated to Amnesty International that the first group consisted of people aged over 25, who were not students, who had criminal records or “were previously known by the police or security forces”.

⁸ These trials were not completed at the time of this report.

⁹ At the time of the visit of Amnesty International’s delegation to Athens only these two written judgments were available.

Of the group of 126 defendants, 111 appeared before the Athens Court for *flagrante delicto* on 5 December 1995.¹⁰ They were assisted by about 80 defence lawyers. The trial of eight defendants who were absent was postponed for reasons such as illness or military service. The seven other defendants who were absent were tried *in absentia*.

The defence lawyers immediately raised objections on two points:

- a) the division of all the adult defendants in two groups of 260 people and 126 people respectively, which had resulted in the postponement of the trial of the 260 people while the group of 126 were immediately being brought to trial.
- b) the material conditions of the trial. Given the large number of defendants, they argued, the courtroom was much too small so the hearings were not really public: access to the public - even families - was restricted; defence lawyers had to identify themselves before entering the courtroom. In addition, they had to stand in a small area with no possibility to open their files, take notes, and had much difficulty in communicating properly with their clients, which fundamentally affected the proper exercise of their duty to assist their clients.

In view of the above, the defence lawyers requested that the trial be postponed. The court ruled that the courtroom was the most appropriate of all those available, given the number of defendants with their lawyers and the nature of the case. While specifying that new arrangements with seats must be found, the court consequently rejected the defence lawyers' request that the trial be postponed.

Then two days later, on 7 December 1995, the court reversed its decision and ruled that given the small size of the courtroom and the number of defendants, and also in view of the fact that in any event a second group of defendants would be tried separately (see Section V), the group of 118 defendants¹¹ should be divided into sub-groups. Such sub-groups would be tried in sequence by the same chamber, that is by the same Presiding Judge and two Judges. (For the benefit of clarity, such sub-groups, which were six in total and of 15 to 25 defendants each will now be referred to as groups 1/118, 2/118, etc.)

The official protest of the defence lawyers

When, on 8 December 1995, the hearings resumed in the trial of group 1/118, the defence lawyers made an official statement in which they denounced what they asserted was the violation of the defendants' right to a public trial, together with the obstacles to a proper exercise of their duty, as lawyers, to assist their clients. This statement had been agreed in a meeting of the Athens Bar Association on 7 December 1995. The court did not rule on the statement, which was only included in the final judgment, together with the press release which accompanied it.

¹⁰ Under *flagrante delicto* procedure, defendants may be brought to trial, before a special chamber of the Criminal Court, immediately following interrogation by police without any further pre-trial hearings, thus limiting the ability of the defence to prepare for trial in comparison to normal cases.

¹¹ The 111 defendants who were present and the seven defendants tried in absentia.

Following the statement, the defence lawyers, as well as the lawyers representing the Athens Polytechnic University as civil claimant, left the courtroom, although some of them remained and followed the trial as silent observers. As a direct consequence, from that moment, which was before the actual hearings on this case had even started, the defendants received no assistance from lawyers. Although the lack of assistance resulted from a conflict between the court and the defence lawyers, the court did not take steps to ensure that the defendants wished to proceed without counsel, as they had the right to do under Article 6(3)(c) of the European Convention on Human Rights and Article 14(3)(d) of the ICCPR or to appoint counsel for the defendants if they were unable or unwilling to defend themselves without counsel.

The intervention of the President of the Court of Cassation¹²

On 10 December 1995 the President of the Court of Cassation, Mr Kokkinos, who was addressing an audience of Prosecutors, stated his strong disapproval of what he described as disruption and disorder in the trial of people who had behaved in a “subversive and anarchist way against the State”. He expressed his strong hope that an end would be put to such obstacles to proper judicial process. Although his intervention was criticized by the Prosecutors present, who voted against it, it was largely publicized in the media. Mr Kokkinos’ statement was made two days after the official protest of the defence lawyers and three days before the end of the hearings and the sentences passed on 19 defendants of the group 1/118. Mr Kokkinos would, as President of the Court of Cassation, have been in a position to rule, or to be the superior of the judges who would rule, on the case at a later stage, had there been cassation proceedings. However, he retired in July 1996.

Such public interference with the course of a trial by the highest judge in the country raises serious concern whether the right of every defendant to a fair trial by an “independent and impartial” tribunal, as is guaranteed in Article 10 of the Universal Declaration, Article 6(1) of the European Convention on Human Rights, Article 14 (1) of the ICCPR and the Basic Principles on the Independence of the Judiciary was respected. More specifically, Principle 2 states that judges should

“decide matters before them impartially, on the basis of facts and in accordance with the law, without any restriction, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason”

which clearly means that judges should not only be protected from the executive and legislative branches, but also from their colleagues and superiors in the judiciary.

The replacement, as of 8 December 1995, of the Presiding Judge after he had dissented when the court rejected the objections of the defence lawyers’ request for the postponement of the trial is also a matter of concern. The court gave no other explanation for the replacement than that the Presiding Judge was “unable” to continue with his duty.

¹² After a judgment of a Court of First Instance, the defendant may appeal to the Court of Appeals, which can review questions of fact as well as law. The defendant can seek further review by the Court of Cassation which is limited to review of the application of the law to such findings.

The charges

In the trials of groups 1/118 to 6/118 - which resulted from the division of the "group of 118" - the defendants were all charged with:

- a) conspiracy (Article 187 of the Greek Penal Code);
- b) disruption of public order (Article 189 of the Greek Penal Code);
- c) complicity in damages to public property (Article 382 of the Greek Penal Code);
- d) (moral) complicity in the destruction of State symbols (Article 181 of the Greek Penal Code);
- e) illegal entry and presence in public property (Article 334 of the Greek Penal Code)

Denial of the right to examine witnesses and unequal treatment

Amnesty International is concerned that at least in the trials of groups 1/118 and 2/118, defendants were unable to exercise their right to examine witnesses against them. Article 6(3)(d) of the European Convention on Human Rights recognizes the right for the accused "to examine, or have examined witnesses against him". Article 14(3)(d) of the ICCPR contains a similar guarantee. This right is also recognized in Article 357 of the Greek Criminal Procedure Code which defines the order in which parties put questions to witnesses.

Although there were 19 written statements by the prosecution witnesses in the investigation file, only one prosecution witness appeared in court in the trial of group 1/118 and three in the trial of group 2/118. The written statements of the remaining witnesses, 18 in group 1/118 and 16 in group 2/118, were read in court. However, defendants were not able to examine them or to have them examined, either at the pre-trial stage - where defendants or their lawyers were not present when the statements were made - or at the trial.

Moreover, Amnesty International is concerned that the principle of equality of treatment with similarly placed defendants, as guaranteed by Article 10 of the Universal Declaration and Article 14 (1) of the ICCPR, was not respected in the examination of prosecution witnesses in the trials of at least groups 1/118 and 2/118. Two prosecution witnesses who had not been summoned to court in the first trial appeared in the second. As a consequence, defendants in group 1/118 were unable to examine these two witnesses, which, in addition to their right to examined witnesses, was inconsistent with the principle of equality of treatment.

Presumption of innocence

Amnesty International is concerned that the convictions in these cases violated the fundamental right to presumption of innocence. Article 6(2) of the European Convention on Human Rights provides that "[e]veryone charged with a criminal offence shall be presumed innocent until proved guilty according to law". Articles 11 (1) of the Universal Declaration and 14(2) of the ICCPR contain virtually identical guarantees. The Human Rights Committee, the body of experts which monitors implementation of the ICCPR, has explained that the burden of proof on the prosecution is very high:

“By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of the doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt”.

Without making any assessment of the weight of the evidence against individual defendants in groups 1/118 and 2/118, Amnesty International has concluded that the prosecution presented no evidence which would tend to prove that any individual defendant was guilty of the charges on which they were convicted and the court did not cite evidence in either judgment supporting convictions of individual defendants on these charges.

Contrary to Greek law, which requires the court to explain the reasons for its verdict and to discuss the evidence presented in the case, there was no specific discussion of the evidence against any of the defendants in the written judgments of the trials of groups 1/118 and 2/118. Mr Tsoulis, police officer and the only prosecution witness who was present at the hearing in the first trial, did not, in his testimony before the court, say anything which could support a guilty verdict on any individual defendant. He described the offences committed and damage made as being the responsibility of “groups of demonstrators”, but clearly stated that he was unable to identify any individual defendant on trial as having participated in them.

Mr Tsoulis made a similar statement when he appeared in the trial of group 2/118. Mr Rizas and Mr Kozyrakis, also police officers, who appeared as prosecution witnesses in addition to Mr Tsoulis at the trial of group 2/118, gave more detailed descriptions of the events. They testified on groups of 50 to 60 demonstrators taking turns during the clashes. They stated that the members of such groups had their faces masked, so these two witnesses were unable to identify any of the defendants in group 2/118 as having participated in the events they had described.

Nothing in the judgments of groups 1/118 and 2/118 indicates that the written prosecution testimonies which were read in court linked any individual defendant to the crimes charged.

The judgments contain no additional discussion on the merits of the case. They refer to the Court’s *intime conviction* (the civil law doctrine whereby the judges weigh all the evidence in accordance with their innermost conviction). However, the doctrine of *intime conviction* restricts the scope of the court’s discretion in weighing the evidence:

- a) the maxim “*in dubio pro reo*” (“in doubt decide for the accused”) establishes a standard in proof which is substantially similar to the Anglo-American burden of proof “beyond reasonable doubt”;
- b) the written judgment in civil law must in any case explain, even though not at length, how the court reached its verdict, in order to enable the appellate court to assess whether the judgment was in accordance with law and facts.

Amnesty International is concerned that the verdicts reached by the court were based on circumstances other than the evidence of charges against the defendants (see below). Overall, Amnesty International considers that the principle of presumption of innocence as guaranteed by

Article 11 (1) of the Universal Declaration, Article 14 (2) of the ICCPR and Article 6(2) of the European Convention on Human Rights were not respected.

Individual responsibility

In the written motives of the judgment there is no discussion of the individual responsibility of each defendant. When addressing the defendants' responsibility the court always made lists of names of:

- all the defendants for group 1/118,
- the three defendants present and the 17 defendants being tried *in absentia* for group 2/118.

This is inconsistent with the fundamental principle of criminal law, which is recognized in most countries - including Greece - that no one shall be convicted of an offence except on the basis on his or her individual penal responsibility.

The verdicts

Amnesty International is concerned that the verdicts were in fact based on the presence or absence of the defendants at the trial. While 111 defendants were present at the initial hearing (with in addition seven who were absent and tried *in absentia*), many of the 111 defendants were absent when hearings resumed for groups 1/118 and 2/118, after the court had ruled on the division into sub-groups and the defence lawyers had left the courtroom. As a result, the 19 defendants in group 1/118 were tried *in absentia* and 17 out of 20 defendants in group 2/118 were tried *in absentia*. The verdicts heavily reflected the difference between those present and those tried *in absentia*:

- in the trial of group 1/118 each of the 19 defendants, who were all tried *in absentia*, was found guilty of all the charges except one (conspiracy)
- in the trial of group 2/118 each of the 17 defendants who were tried *in absentia*, was found guilty of all the charges except one (conspiracy). Each of the three defendants who were present was acquitted of all charges except one (illegal entry and presence in the premises of Athens Polytechnic University).

The sentences

The sentences in the trials of groups 1/118 and 2/118 were as follows:

- a) group 1/118: the 19 defendants were sentenced to 40 months' imprisonment, with for three of them immediate enforcement notwithstanding appeal;¹³

¹³ At the time of the Amnesty International delegation's visit to Athens, the Public Prosecution had not taken any steps to enforce any of the sentences against the seven people sentenced to 40 months' imprisonment with immediate enforcement notwithstanding appeal. However, on 14 May 1996, one of them, Anastasia Vezirtzoglou, was arrested at her home and taken to the prison of Korydallos in Athens. She challenged the warrant before the Court of Appeal, which on 20 May, decided her release pending appeal trial. On 14 September 1996 the magazine *Alpha* published a letter from Theodoros Oikonomou in which he stated that he had been in prison, serving his 40-month sentence, for the last six months.

b) group 2/118: Three defendants were sentenced to four months' imprisonment with the possibility of obtaining release at the rate of 1,500 drachmes per day; 17 defendants were sentenced to 40 months' imprisonment, with for three of them immediate enforcement notwithstanding appeal. (see footnote 13)

As of the time of writing this report, Amnesty International has not obtained copies of the judgments in the trials of groups 3/118 to 6/118. Therefore, the sentences indicated below for these groups are extracted from press articles:

- one defendant was acquitted;
- eight defendants were sentenced to four months' imprisonment;
- seven defendants were sentenced to 31 months' imprisonment;
- 63 defendants were sentenced to 40 months' imprisonment, with - for one of them - immediate enforcement notwithstanding appeal. (see footnote 13)

VII. THE TRIALS ON 19 AND 21 MARCH 1996

As explained earlier in Sections IV, V and VI, in addition to the 80 to 90 minors and the group of 126 defendants who were brought to trial shortly after their arrest (and in any case in early December 1995), there were about 260 other defendants who were released after they had been notified of the charges against them. The 260 defendants were then divided into sub-groups of about 15 defendants, each of them to be tried at various dates starting from January 1996.

Initially all the trials were scheduled to be held on Saturdays, which, in accordance with the usual procedure of the Athens Criminal Court, are set aside only for *flagrante delicto* trials. Defence lawyers then argued that, in view of the time which had elapsed since 18 November 1995, the proceedings could no longer be considered as under *flagrante delicto* and obtained that the trials be postponed to weekdays. The two trials Amnesty International observed were among the first of such trials.

7.1: Distribution of the trials

The trials of each sub-group of 15 defendants were distributed according to the usual way criminal cases are distributed among the various chambers of the Athens Criminal Court of First Instance, that is by way of draw. As a result, and contrary to what had been the case with the group of the 118 defendants, each sub-group of defendants in this case was - or will be - tried by different chambers (that is one Presiding Judge and two Judges).

As described above, the division of the whole group of people (excluding the minors) who were sent to trial in this case (see Section V), led to different verdicts and sentences for defendants in the same circumstances, contrary to the fundamental principle of equality of treatment.

7.2: Contacts with the court before the trials

Prior to the trials, Amnesty International had informed the court about its wish to observe the two trials which took place on 19 and 21 March. Letters, which included requests for appointments with the Presiding Judges and Public Prosecutors of each trial were sent to the people whose names had been given to Amnesty International by the Central Office of the Public Prosecution of Athens Criminal Court: for the trial of 19 March 1996, Mr Bassis (Presiding Judge) and Mr Liakopoulos (Public Prosecutor), and for the trial of 21 March 1996, Mr Manolaros (Presiding Judge) and Mr Pappas (Public Prosecutor).

Contacts before the trial of 19 March 1996

The day before the hearings, on 18 March 1996, the delegates went to the Secretariat of the Central Office of the Public Prosecution of Athens Criminal Court, where they obtained confirmation that Mr Liakopoulos would be the Prosecutor in this trial. The response to their request to meet him was that this would only be possible at the door of the courtroom just before the trial was due to start at 9am the following day.

At the door of the courtroom at 8.30am on 19 March the delegates were unable to meet Mr Liakopoulos. However, they met briefly the Presiding Judge who was not Mr Bassis, but Mr Kapetsonis. When they introduced themselves, Mr Kapetsonis said he was not aware that the Polytechnic case would be tried that day by his chamber. When the delegates expressed their intention to observe the trial, he answered that “*according to the Greek Constitution, trials [were] public except in cases where, for reasons as specified by law, the Court may partly or completely decide to the contrary*”. When, a few minutes later Polytechnic trial opened in this courtroom, the Presiding Judge was Mr Kapetsonis. The Public Prosecutor was Mr Lazarakos, not Mr Liakopoulos.

Contacts before the trial of 21 March 1996:

On 19 March, the delegation went again to the Secretariat of the Central Office of the Public Prosecution of Athens Criminal Court where it had confirmation that Mr Pappas would be the Prosecutor at the trial scheduled for 21 March 1996. They arranged to meet him at his office on 21 March at 8.30am.

The delegation was then received by Mr Manolaros, Presiding Judge. He confirmed he had received the letter announcing Amnesty International’s visit and said that in his capacity as Presiding Judge at the trial of 21 March 1996 he would provide its delegates with all possible facilities to help them to fulfil their mission. These included seats in a well-situated part of the courtroom separate from the prosecutor and defence, and access to an interpreter if needed.

At 8.30am on 21 March the delegates met Mr Pappas, Public Prosecutor, who informed them that no trial in the Polytechnic case was scheduled for that day and that he was not to sit as Prosecutor in such trial. He then suggested that they go “to have a look around” and observe trials in other chambers of the Tribunal, which would give them “confirmation that fair trials [were] the norm in Greek Criminal Courts”.

The delegates, however, went to the door of the same courtroom where they had gone two days earlier for the first trial. As they had no information on the name or even the presence of any

public prosecutor, they waited for the Presiding Judge - Mr Manolaros - but instead met another judge, whom they later learned was Mr Yannakopoulos, who informed them he was the Presiding Judge in the Polytechnic trial that day. He seemed surprised at Amnesty International's presence about which he apparently had not been informed.

When, a few minutes later, the court proceeded in the courtroom for what was to be the Polytechnic case, Amnesty International had confirmation that the Presiding Judge was Mr Yannakopoulos, not Mr Manolaros. The Public Prosecutor was not Mr Pappas but Mr Goumas.

From the above description it appears that:

- a) For each of the two trials observed, the Presiding Judge and the Public Prosecutor were not the same ones as announced before Amnesty International's visit and whose names were confirmed to its delegates the day before each trial by the Secretariat of the Central Office of the Public Prosecution of Athens Criminal Court.
- b) A few minutes before he entered the Courtroom, the Presiding Judge for the trial of 19 March 1996 denied that his court would try the Polytechnic case that day.
- c) On the morning of 21 March 1996, one Public Prosecutor denied that the Polytechnic case would be tried that day.
- d) Mr Manolaros, who on 19 March had confirmed that he would be presiding over the trial of 21 March, was replaced for this trial. He was seen that same morning of 21 March presiding over another criminal trial in another chamber of the same building.

While recognizing that the organization of trials at Athens Criminal Court provides for the replacement of judges in order to address the unavailability of incumbents for reasons such as illness or conflicts in trial schedules, Amnesty International's delegates were unable to obtain from officials they met the reasons for the last minute replacements they were witnessing. They cannot either provide explanation about the reluctance and even inaccuracies that they faced in most of their meetings with the Judges and Public Prosecutors. In Amnesty International's view, these sudden and unexplained changes in the composition of the courts, for each trial observed, raise doubts about the independence and impartiality of such courts.

7.3 Material conditions of the trial observation

For the two trials, the hearings took place in the same courtroom in a building where there are several other such courtrooms.

Although the courtroom was rather small, there was enough room for the defendants to be seated, for their lawyers to assist them in an adequate manner and for the public to attend without any limitation. Police officers were not too conspicuously present. The delegates were able to observe both trials in the best possible conditions for independent observers, given the circumstances.

As provided under Greek Law, the Public Prosecutor sat at the left side on the same bench as the Judges, which gave the impression that he was a member of the court.¹⁴ The stand where defendants and witnesses were examined was very close to the court bench. As a result exchanges between the Court and the defendants, their lawyers or witnesses were very often not audible from the public area, and appeared as private conversations rather than public hearings.

7.4: The trial of 19 March 1996

The charges

The charges were the same as for the group of 126 (see Section VI).

The hearing

All the defendants but two were present with their lawyers. Two witnesses had been summoned to court by the Prosecution: Mr Tsoulis, a police officer, who was present and Mr Poudourakis, professor at the Athens Polytechnic University, who was absent.

The defence lawyers immediately raised the question of the right to examine witnesses, namely that:

- a) Mr Poudourakis' presence was indispensable at the hearings;
- b) the presence of all the other witnesses who had been heard at pre-trial stage was also indispensable at the hearing. The lawyers insisted that only the presence of these witnesses at the hearing would enable the defendants to exercise their right to examine or have examined the witnesses against them.

The court decided to postpone the trial until 23 September 1996.

7.5: The trial of 21 March 1996

Twelve out of the 15 defendants were present at the hearings. The trial for one defendant who was absent was postponed after one of his relatives provided a written justification that he was performing his military service. The two other defendants who were absent were tried *in absentia*. Each of the defendants who were present was assisted by a lawyer of his own choice. The trial for one defendant who was present was postponed when the lawyer he had chosen represented that there was a conflict in trial schedules as he was appearing as defence lawyer in another higher criminal court.

The charges

¹⁴ Nevertheless, despite this seating arrangement, which is followed in some other civil law countries, the delegation did not observe any private conversations on the bench between the prosecutor and the judges.

These were the same as for all the defendants in previous trials.

Right to examine witnesses

As for the 19 March trial, the same two prosecution witnesses had been summoned to court. Only one of them, Mr Tsoulis, the police officer, was present. The defence lawyers raised once more the question of the right to examine witnesses. Their arguments were the same as those used in the trial of 19 March 1996. This time, however, contrary to what the other chamber had decided on 19 March, this chamber decided not to postpone the trial, but to hear the witnesses' testimonies. First, the court examined Mr Tsoulis, then enabled the prosecution and defence to cross-examine him. The court then read aloud the written testimony of the absent witness, Mr Poudourakis, as well as the written statements of the 17 other prosecution witnesses which were in the investigation file.

This way of proceeding did not enable the defendants, either at pre-trial stage or at the trial, to exercise their right "to examine or have examined the witnesses against [them]" as guaranteed by Article 6(3)(d) of the European Convention on Human Rights, Article 14 (3) of the ICCPR, and by Article 357 of the Greek Criminal Procedure Code. In addition, it was not consistent with what had happened in the trial of group 2/118 where two additional prosecution witnesses had appeared in court and been examined (see Section VI). Finally, compared with the decision to postpone the 19 March trial, to permit defendants to confront prosecution witnesses, this was an example of the unequal treatment which resulted from several courts with different judges trying the same case. This was contrary to the principle of equality of treatment with other similarly placed defendants, as is guaranteed by Article 10 of the Universal Declaration and Article 14 (1) of the ICCPR.

Finally, the court examined the 15 witnesses for the defence.

Presumption of innocence

Amnesty International considers that the trial did not respect the right of each defendant to the presumption of innocence which requires the prosecution to prove the defendant guilty beyond a reasonable doubt. Nothing in the testimony of Mr Tsoulis, the police officer, directly linked any individual defendant to the acts which formed the basis of the charges against them. On the contrary, he specifically stated that he was unable to identify any of them as having participated in the events of the Polytechnic University.

All the written statements read in court gave general descriptions of the violent actions by groups of demonstrators and of the resulting damages but provided no specific evidence against any of the individual defendants in the trial.

In his closing argument, the Public Prosecutor recognized that on 17 November 1995 most of the participants in general - not only the 13 defendants standing trial on 21 March 1996 - had intended to demonstrate peacefully, but had been encircled by police forces when violent incidents were caused by a small number of unidentified persons.

However, the Public Prosecutor argued the 13 defendants joined the group of demonstrators who disrupted public order and caused damages to public property. With regard to the burning of three Greek flags, the Prosecutor recognized that this was the action of a small group of violent demonstrators, as had been evidenced in television footage. In his view, however, even though there was no proof that the 13 defendants at the trial had taken part in the actual burning of these flags, the fact that they had done nothing to prevent it was sufficient to constitute complicity under law.

In contrast to the judgments in the trials of groups 1/118 and 2/118 (see Section VI), the judgment contained a discussion of the evidence supporting the verdict. Its reasoning for reaching its verdicts was that all the defendants in the trial were part of the 500 people who had entered and remained in the Polytechnic University after the “peaceful” part of the commemorating rally. In doing so, such people had clearly demonstrated their intention to become part of the conspiracy, the objective of which was to disrupt public order and cause damage to public property.

More specifically regarding the damage to public property and the burning of the flags, the court adopted the Prosecutor’s view that although there was no evidence of any of the defendants’ participation, by their merely being present and not making any attempt to prevent such damage and destruction of the flags, they had provided encouragement and moral support to the actual participants. In the court’s opinion this could constitute under law, “moral complicity”.

A number of Greek lawyers have confirmed to Amnesty International that the concept that being present and not preventing an offence would constitute “moral complicity” is contrary to the regular application by Greek courts of the principle, as recognized in criminal law in most countries including Greece, that penal complicity requires intentional and effective assistance. In any event, there is nothing in the evidence or in the judgment suggesting that the presence of any one of the 13 defendants at the place and at the time of the criminal acts had been anything more than passive or that any of them had actually participated in or provided support for such criminal acts.

Therefore, Amnesty International considers that the prosecution failed to satisfy its burden to prove each of the defendants guilty beyond a reasonable doubt, and that the court did not in its judgment cite evidence supporting conviction of individual defendants on the charges.

Individual penal responsibility

As already mentioned, the charges were identical for all the defendants. At no time, in the course of the hearing, whether in the examination of the witnesses or in the questioning of the defendants, as well as in the reading of the written statements was there any attempt made to determine the individual responsibility of each defendant for each of the charges against him.

Similarly, the Public Prosecutor in his closing argument described the criminal offences committed by the participants in the events of the Athens Polytechnic University in general without addressing the specific participation of any of the 13 defendants in any of such offences.

Finally, there was no discussion by the court in the judgment on the individual responsibility of any of the defendants for any of the charges.

This is contrary to the principle of individual penal responsibility which is a fundamental principle of criminal law recognized in most countries, including Greece.

The verdict

The 13 defendants were found guilty on all the charges, including conspiracy. When compared with the verdicts in the trial of groups 1/118 and 2/118, defendants who were in identical circumstances, the verdict in this trial is contrary to the principle of equal treatment with other similarly placed defendants (see Section VI).

The sentences

The defendants were sentenced to:

- a) 21 months' imprisonment, with suspended sentence (for three years), for the 10 younger defendants (under 21 years old);
- b) 32 months' imprisonment for the three older defendants (over 21 years old), with the possibility of obtaining release at the rate of 1,500 drachmes per day.

All the defendants appealed against their sentences.

Compared with the sentences in the trials of groups 1/118 and 2/118 (see Section VI), sentences in this first trial to be completed in the "group of 260" are much more moderate, especially given the more severe verdicts. This appears to be inconsistent with the principle of equal treatment with other similarly placed defendants.

Further steps taken by the trial observers

After the trial of 21 March 1996 Amnesty International requested from Mr Goumas, Presiding Judge, and Mr Yannakopoulos, Public Prosecutor, copies of the full text of the investigation file and of the judgment.

On 23 May 1996, after Amnesty International had repeated its request in writing, it received a fax from Mr Andreiotelis, Public Prosecutor at the Athens Criminal Court, which stated that: "following advice from and in agreement with Mr Yannakopoulos, Presiding Judge" at the trial, and "in accordance with the dispositions of Article 147 of the Greek Criminal Procedure Code", the decision had been made to refuse to provide Amnesty International with copies of these documents. The article invoked by Mr Andreiotelis provides that copies of the official documents relating to a criminal case are delivered upon request to and agreement from the Presiding Judge of the criminal court which tried the case. The refusal to provide them to Amnesty International is inconsistent with the requirement in Article 6(1) of the European Convention on Human Rights to ensure a public hearing and to pronounce judgments publicly. Article 14(1) of the ICCPR also requires a public hearing and requires that "any judgment rendered in a criminal case shall be made public".

The fact that the Presiding Judge, who had the power under the above article of the Greek Criminal Code to accept Amnesty International's request, decided "in agreement" with the Prosecution - which is not required at this stage of the proceedings - to refuse it, raises doubts on whether the openness to independent trial observations by human rights organizations has actually become part of the culture of the Greek judiciary.

SUBSEQUENT DEVELOPMENTS

Amnesty International has received additional information about four trials of other sub-groups from the group of the 260 people, which reportedly took place after 23 March 1996. The trials were based on the same charges against the defendants as those described in this report and led to the following results:

- a) 25 April 1996: the defendants were acquitted of the charges of conspiracy and of complicity with the destruction of state symbols. They were found guilty of all the other charges and sentenced to 17 months' imprisonment, with suspended sentence.
- b) 26 April 1996: trial postponed.
- c) 9 May 1996: 16 months' imprisonment, with suspended sentence.
- d) 10 May 1996: the defendants were acquitted of all charges except disruption of public order and sentenced to four months' imprisonment, with suspended sentences.

These are further examples of inconsistent rulings resulting from compositions of the chambers, with different judges trying the same case, which is contrary to the principle of equality of treatment.

Overall, Amnesty International considers that, both at pre-trial and trial stages, the proceedings studied and observed in the cases of the people tried in relation to the incidents at the Athens Polytechnic University on 17 and 18 November 1995, were in many respects not conducted in accordance with the relevant human rights standards, including the European Convention on Human Rights, to which Greece is a party, other international instruments and Greek law.

AMNESTY INTERNATIONAL'S RECOMMENDATIONS

In the light of the failure of the proceedings to conform to international standards in a number of respects, Amnesty International recommends to the Greek authorities that:

- ◆ the judgments of all persons convicted in this case should be vacated;
- ◆ new trials should be conducted in accordance with international standards.

The organization further calls for:

- ◆ Greece to ratify the ICCPR and its Optional Protocols without any limiting reservations;
- ◆ the relevant authorities to ensure that prompt and impartial investigations of all reports and complaints of ill-treatment brought to its attention are carried out in accordance with Articles 12 and 13 of the Convention against Torture;
- ◆ the relevant authorities to ensure effective implementation of international human rights standards at all stages of the proceedings in all criminal cases, including the right to prompt notification of the charges, the right to prompt notification of arrests to families, the right to prompt access to a lawyer; the right to prompt presentation before a judge; rights associated with the examination of witnesses and equality of treatment;
- ◆ the relevant authorities to implement recommendations of the Report of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment concerning the detention facilities at Athens Police Headquarters.