



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

COURT (CHAMBER)

CASE OF PHILIS v. GREECE

(Application no. 12750/87; 13780/88; 14003/88)

JUDGMENT

STRASBOURG

27 August 1991

In the Philis case v. Greece*,

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 the Rules of Court***, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr D. BINDSCHEDLER-ROBERT,
Mr F. GÖLCÜKLÜ,
Mr L.-E. PETTITI,
Mr B. WALSH,
Mr C. RUSSO,
Mr N. VALTICOS,
Mrs E. PALM,
Mr I. FOIGHEL,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 21 February and 26 June 1991,

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 21 May 1990 within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in three applications (nos. 12750/87, 13780/88 and 14003/88) against the Hellenic Republic lodged with the Commission under Article 25 (art. 25) by a Greek national, Mr Nicolaos Philis, on 5 January 1987, 6 April 1988 and 24 June 1988 respectively.

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

* The case is numbered 32/1990/223/285-287. 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.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

*** The amendments to the Rules of Court which came into force on 1 April 1989 are applicable to this case.

to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings. On 27 June 1990 the President of the Court gave him leave to present his own case, with the assistance of counsel, during the written proceedings, it being understood that he would have to be represented by a lawyer at the hearing (Rule 30 para. 1).

3. The Chamber to be constituted included ex officio Mr N. Valticos, the elected judge of Greek nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 May 1990, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mrs D. Bindstedler-Robert, Mr F. Gölcüklü, Mr L.-E. Pettiti, Mr B. Walsh, Mr C. Russo, Mrs E. Palm and Mr I. Foighel (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Greek Government ("the Government"), the Delegate of the Commission and the applicant on the need for a written procedure (Rule 37 para. 1). In accordance with the orders made in consequence, the Registrar received the applicant's memorial on 25 October 1990. By telex message of 31 October 1990 the Agent of the Government indicated that he no longer intended to file a memorial; on 14 December 1990 the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. Having consulted, through the Registrar, those who would be appearing before the Court, the President had directed, on 10 July 1990, that the oral proceedings should open on 19 February 1991 (Rule 38). In addition, on 19 December 1990 he granted the applicant's request for legal aid (Rule 4 of the Addendum to the Rules of Court), and the latter then designated the lawyer who was to represent him.

6. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr C. ECONOMIDES, Director

of the Special Legal Department of the Ministry of
Foreign Affairs,

Agent,

Mr N. KLAMARIS, Professor

at Athens University,

Mr C. CHRISANTHAKIS, Lecturer

at Athens University,

Miss A. PAPATHANASSIOU, Member
of the Special Legal Department, Ministry of Foreign
Affairs, *Counsel*;
- for the Commission
Sir Basil HALL, *Delegate*;
- the applicant and his counsel,
Mr S. PERRAKIS, Professor
of law at the Komotini University.

The Court heard addresses by Mr Economides and Mr Klamaris for the Government, by Sir Basil Hall for the Commission and by the applicant himself and his counsel, Mr Perrakis, as well as their answers to its questions.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

7. Mr Philis is a Greek national. Since 1970 he has been a consultant engineer.

Following a disagreement as to the amount of fees owed to him for a number of projects which he had designed, three disputes arose between him and those who had commissioned the work, two public corporations and a private individual.

A. The proceedings concerning the dispute with the Autonomous Organisation for Labour Housing (Autonomos Organismos Ergatikis Katoikias - "A.O.E.K.")

1. The background to the dispute

8. From 1971 to 1975, and then from 1976 to 1978, the A.O.E.K., a body under the authority of the Labour Ministry, concluded with the applicant a series of contracts for the design of electro-mechanical installations and the supervision of the relevant work. In March 1978 it repudiated these contracts and refused to pay him the agreed remuneration.

9. Between 30 October 1978 and 23 December 1982, the applicant brought, in the Athens first-instance court (Monomeles Protodikeio Athinon), i.e. composed of a single judge, thirteen actions to recover the fees payable for the supervision of the work in question. In addition, he asked the Technical Chamber of Greece (Techniko Epimelitirio Ellados - "T.E.E.") to bring proceedings on his behalf concerning the fees which he

claimed in respect of the design of the projects, because, according to the terms of Royal Decree no. 30/1956 (see paragraph 45 below), it alone had the capacity to institute proceedings for the recovery of fees payable to engineers, being subrogated to their rights for this purpose. The T.E.E. brought four actions, on 23 December 1977, 16 December 1978, 5 December 1979 and 12 January 1980.

10. On 25 September 1979 Mr Philis asked the T.E.E. to bring four more actions. He repeated his request on 11 October and 19 November 1982. By a letter of 8 December 1982, the T.E.E. warned him of the poor prospects of success of the additional actions envisaged; consequently, it demanded the pre-payment of the legal fees and the lodging of a bank guarantee intended to cover the costs of the opposing party. The applicant regarded these conditions as unlawful and called upon the T.E.E. not to delay any further, because of the danger that his rights would become time-barred. On 20 December 1982 he repeated his protest but agreed to provide the guarantee requested.

On 4 January 1983 the T.E.E. informed him that on 24 December 1982 it had complied with his request of 25 September 1979. It stated however that it would seek purely declaratory judgments (*anagnoristikes agoges*) if it did not receive payment of the legal costs before the first hearing.

11. In the meantime the first-instance court had allowed two of the actions brought by the T.E.E.; the Athens Court of Appeal (*Efeteio*) had, however, dismissed them, whereupon the T.E.E. had appealed to the Court of Cassation (*Areios Pagos*). In the course of the proceedings, the A.O.E.K. requested a stay, with a view to securing an out of court settlement with the applicant.

12. At this point, Parliament adopted, on 13 April 1983, on the basis of a bill prepared by the Labour Ministry, Act no. 1346/1983 which amended and supplemented various provisions of the employment legislation. Section 29 thereof reads as follows:

"Transitional provisions

...

5. Works contracts or contracts for the provision of independent services of specified or indefinite duration, concluded prior to the day of the publication of the present Act between the A.O.E.K. and private engineers ... or engineers employed in the public sector or by public corporations ... shall be valid notwithstanding any other statutory provisions.

The ... above-mentioned engineers shall be entitled to the remuneration agreed upon; the provisions ... of Act no. 716/1977 'on the registers of researchers and the award and design of projects' shall not apply.

The provisions of this paragraph shall also apply to cases currently pending before the courts at any level of jurisdiction in so far as no final ruling has been made."

13. After the entry into force of the 1983 Act, the A.O.E.K. refused any further negotiation.

Before the Court of Cassation, Mr Philis complained of the "interference of the executive, through the legislature" in his cases pending before the courts.

14. By two judgments of 25 May and 19 September 1984 (nos. 919/1984 and 1597/1984), the Court of Cassation ruled that the new Act covered all engineers and did not therefore infringe the principle of equal treatment. It added that nothing prevented the legislature from adopting measures affecting civil rights provided that that principle was observed. Finally, it considered that the appeals were unfounded because they were based on provisions which had been repealed.

These judgments are not at issue in the present case.

2. The first set of proceedings

15. On 13 April 1981 the T.E.E. brought an action before the Athens first-instance court for the payment of the applicant's fees relating to the projects designed in 1977 and 1978 (see paragraph 8 above).

On 30 November 1981 the A.O.E.K. was ordered to pay the sum of 898,697 drachmas. It appealed from this judgment on 25 January 1982. The applicant intervened in the proceedings on 26 February 1987 (see paragraph 45 below).

16. On 6 April 1987 Mr Philis requested the T.E.E. to bring additional actions to obtain the compound interest (Article 296 of the Civil Code) which had accrued since 1981 and for the adjustment of his claim in accordance with the rate of inflation (Article 12 para. 10 of the Royal Decree of 19 February 1938). In addition, he complained that the action brought by the T.E.E. of 13 April 1981 had sought merely a declaratory judgment and that it had failed to contest a large number of objections raised by the opposing party.

17. The Athens Court of Appeal dismissed the A.O.E.K.'s appeal on 23 May 1987 (judgment no. 6324/1987). It considered that since 1977 no employment or works contract existed between the applicant and the Organisation. On the contrary, it noted that Mr Philis had designed the disputed projects as an independent engineer within the meaning of Act no. 716/1977 (see paragraph 12 above) and that the Act of 13 April 1983 was therefore not material to the case. The A.O.E.K. appealed to the Court of Cassation on 7 July 1987.

18. Five days previously, the applicant had again requested the T.E.E. to file the additional claims (see paragraph 16 above). On 24 July he complained that it had not yet collected the sum awarded on 30 November 1981 (see paragraph 15 above); in his view, the A.O.E.K.'s appeal did not preclude the execution of the appeal judgment upholding the first-instance

decision. He also protested that there had been no replies to his previous representations.

19. By a fourth letter of 8 September 1987 Mr Philis accused the T.E.E. of being responsible for the slowness of the proceedings in the Court of Appeal and demanded explanations from it as to the manner in which it was carrying out its duties.

20. In a memorandum of 24 November 1987 to the T.E.E.'s legal advisor, which was communicated to the applicant, the lawyer assigned to the case stated as follows:

"...

a) The T.E.E. has never lodged a claim for compound interest against the State or a public corporation.

b) Decree no. 676/1987 does not provide for the adjustment of fees. Admittedly, the above-mentioned judgment of the Court of Appeal (the only one in our favour) recognises that the design projects fell within the scope of Act no. 716/1977 which provides for such a possibility, but in our view this judgment is inconsistent with section 29 para. 5 of Act no. 1346/1983

The terms of this provision suggest that the judgment will be quashed on appeal.

c) More than twenty actions brought by ourselves and Mr Philis have already been dismissed with final effect.

d) The T.E.E. has already paid out considerable amounts for these cases and has had costs awarded against it on several occasions.

e) The outcome of the case pending in the Court of Cassation is uncertain. We shall probably lose it.

For the above reasons we consider it unwise for the T.E.E. to incur criticism and run financial risks by bringing an action for compound interest and the adjustment of the claim under Act no. 716/1977 before the Court of Cassation has given judgment."

21. The applicant again contacted the T.E.E. on 10 December 1987 and 15 January 1988.

22. By a judgment of 17 January 1989 (no. 24/1989), the Court of Cassation ruled that Act no. 1346/1983 was not applicable and dismissed the A.O.E.K.'s appeal.

23. On 8 February 1989 Mr Philis called upon the T.E.E. to pay him the sum awarded on 30 November 1981 plus interest and various others sums, amounting to some 13,000,000 drachmas, which it had not included in the claims filed at the beginning of the proceedings.

On 18 April 1989 the T.E.E. informed him in writing that the legislation in force did not allow it to institute enforcement proceedings against the A.O.E.K., that a request for the re-adjustment of the claim would be unlawful and that an action for interest "would clearly be devoid of any

moral basis". It added that until the delivery of judgment no. 24/1989, serious doubts had subsisted as to the outcome of the main proceedings, which had prevented it from filing such claims, but the applicant could lodge them himself by means of a subrogation action (Article 72 of the Code of Civil Procedure, see paragraph 51 below).

3. The second set of proceedings

24. On 27 March 1984, the T.E.E. re-introduced, in the light of the new legislation, two of the actions which it had brought on 24 December 1982 (see paragraph 10 above) in the Athens first-instance court. Mr Philis intervened in the proceedings.

At the hearing on 23 April 1985 the T.E.E. converted these actions into actions for declaratory judgments.

25. The court found for the applicant, by two judgments of 15 November 1985 (nos. 384/1985 and 385/1985), but on 19 and 24 November 1986 the Athens Court of Appeal allowed the A.O.E.K.'s appeal (judgments nos. 9908/1986 and 10040/1986). It ruled that the applicant's rights were time-barred on the ground that more than five years had elapsed between the end of the budgetary year in the course of which they had come into existence and the date on which the actions had been re-introduced before the court. In reply to the opposing view of the T.E.E., it considered that the initial claims had been made on a different legal basis and had therefore not been capable of interrupting the running of time.

26. On 6 April 1987 Mr Philis complained to the T.E.E. that it had failed to put his case properly. As it refused to lodge an appeal on points of law, he did so himself on 17 June. In his memorial, he stated that the appeal was directed against the T.E.E. as well as against the A.O.E.K.

27. By two judgments of 7 March (no. 213/1989) and 1 May 1989 (no. 450/1989), the Court of Cassation declared inadmissible the submissions concerning the T.E.E. and dismissed the remainder of the appeal as ill-founded.

4. The third set of proceedings

28. On 2 April 1984 the T.E.E. re-introduced one of its actions of 24 December 1982 (see paragraph 10 above) before the Athens first-instance court, which simply declared the action in question time-barred (judgment no. 326/1985 of 16 September 1986).

29. On 19 November 1986 (judgment no. 8671/1986) the Athens Court of Appeal dismissed the T.E.E.'s appeal.

30. The applicant himself filed an appeal on points of law. His memorial, drawn up by a lawyer of his choice, contained a number of complaints regarding the manner in which the T.E.E. had carried out its duties as a body subrogated to his rights.

By a judgment of 7 March 1989 (no. 214/1989), the Court of Cassation declared the appeal inadmissible in so far as it related to the T.E.E. and ill-founded for the rest.

5. The fourth set of proceedings

31. In November 1984 the applicant requested the T.E.E. to re-introduce certain of the actions which it had instituted from 1977 to 1980 (see paragraph 9 above).

In a report of 18 November 1984 to the head of the T.E.E.'s legal department, the lawyer assigned to the case expressed the view that there were sufficient prospects of success and stressed that no problem of *res judicata* arose from judgments nos. 919/1984 and 1597/1984 (see paragraph 14 above) of the Court of Cassation.

32. On 20 February 1986 Mr Philis repeated his request and warned the T.E.E. of the risk that the disputed rights would become time-barred. It brought the actions in the court on 26 February, but only in the form of actions for a declaratory judgment. The applicant intervened in the proceedings.

On 27 May the court dismissed the actions on the same grounds as in the judgments on appeal of November 1986 (see paragraph 25 above).

33. The applicant's appeal filed on 7 October 1986 is still pending.

B. The proceedings relating to the dispute with the Penteli children's hospital (Paidiko Nosokomeio Pentelis - "P.N.P.")

34. On 30 October 1981 the (Patriotiko Idryma Koinonikis Pronoias kai Antilipseos) - Patriotic Foundation for Social Welfare and Assistance - P.I.K.P.A., a public body under the authority of the Ministry of Health and Social Welfare commissioned Mr Philis to design a project for the extension of the heating system of one of its hospitals, the Penteli children's hospital. On 23 February 1983 this hospital, which in the meantime had become a public-law body, asked the applicant to alter his plans. The project, which was submitted within the time-limits laid down, was approved on 13 April 1983.

The applicant considered that a reduction of his fees effected by the P.N.P. was arbitrary and he accordingly asked it to re-examine its method of calculation, but to no avail. On 24 February 1984 he applied to the relevant department of the Ministry of Health and Social Welfare.

35. As he did not obtain satisfaction, the applicant instituted proceedings against the P.I.K.P.A. and the P.N.P. in the Athens Court of Appeal on 1 August 1984 pursuant to section 61 of the "Introductory Act" (*Eisagogikos Nomos*) to the Code of Civil Procedure. On 26 February 1985 he was asked by the court to provide evidence that he was enrolled on the register of

Public expenditure, a condition which allowed an engineer to carry out public works; he did so on 13 January 1986.

On 15 July 1986 the court dismissed his action against the P.I.K.P.A. on the ground that all the latter's rights and obligations had been transferred to the P.N.P. It also ordered the parties to produce expert opinions concerning the work carried out by Mr Philis.

36. At Mr Philis's request, the Court of Appeal held a second hearing on 22 September 1987. It dismissed the action by a judgment, which became final on 16 November 1987. It ruled that, by virtue of Royal Decree no. 30/1956, only the T.E.E. had the capacity to bring proceedings to recover payment of fees in that it was subrogated to the rights of the engineer (see paragraph 45 below); it acknowledged nevertheless that the applicant could reasonably have believed that he was entitled to bring proceedings himself and ordered both parties to pay costs.

C. The proceedings relating to the dispute with A.S.

37. In November 1980 a public works contractor, A.S., commissioned the applicant to draw up plans for the installation of a drains system in the town of Amfilohia.

38. By a letter of 30 June 1981 Mr Philis asked for the assistance of the T.E.E. because A.S. had rejected the plans and had not paid the agreed remuneration.

In September 1981 the T.E.E. replied to him that it wished to settle the dispute out of court.

As the negotiations were unsuccessful, the applicant on 20 January 1982 urged it to bring legal proceedings.

39. On 30 March 1983 he repeated his request and asked the T.E.E. to reassess the sums claimed.

On 23 January 1984 he complained to it for not already having brought the action and for having miscalculated the fees.

40. The T.E.E. brought an action in the Athens first-instance court on 16 December 1985. On 26 April 1986 the action was allowed in part; the applicant did not intervene in these proceedings.

41. The T.E.E. and A.S. challenged the judgment in the Athens Court of Appeal. On 11 June 1987 that court ordered A.S. to pay the T.E.E. 139,336 drachmas plus interest; however, it rejected the submission concerning the reassessment of the claim because the T.E.E. had not specified the amount claimed (judgment no. 7439/1987).

42. On 10 July 1987 Mr Philis complained to the T.E.E. for having failed to include in its memorial the information on the basis of which the coefficient for the above-mentioned reassessment could be calculated; he also requested it to institute enforcement proceedings in relation to the judgment of 11 June 1987.

43. On 9 May 1988 he again contacted the T.E.E. He accused it of having waited for four and a half years before bringing the proceedings, of having miscalculated his fees and of having failed to bring the enforcement proceedings to a conclusion with the result that he had received nothing.

On 6 July 1988 the T.E.E. replied to him that it could not be accused of negligence and that he had not shown that he had suffered damage. It noted that A.S. had already paid the interest and the legal costs and had sought authorisation to pay the remaining sum in ten monthly instalments. Finally it added that it was for Mr Philis himself to specify such property of A.S. as might be liable to attachment.

II. THE RELEVANT DOMESTIC LAW

A. Constitution

44. According to Article 20 para. 1 of the Constitution, "every person shall be entitled to receive legal protection by the courts and may plead before them his views concerning his rights or interests, as specified by law."

B. Royal Decree no. 30 of 31 May 1956 laying down the rules for the remuneration of engineers in general

45. The following provisions of the above-mentioned Royal Decree of 31 May 1956, as they were applicable at the material time, are relevant:

Article 1

"1. Engineers holding diplomas from the National Polytechnic ... , members of Technical Chamber of Greece (T.E.E.), and persons who pursue, on a full-time or part-time basis, ... in accordance with Act no. 6422/1934, the profession of engineer and naval architect, shall, when commissioned to design a project, communicate to the T.E.E. (...) a declaration attesting to their appointment by the commissioning party and a separate declaration to the effect that they have accepted the assignment; where the project is commissioned by the State or a public corporation, the copy of the document authorising the assignment of the project [shall be communicated to the T.E.E.] ...

..."

Article 2

"1. Any party who commissions the design of plans from the persons referred to in Article 1 ... shall deposit with the T.E.E. or the latter's authorised representative ... , the full amount of the project fee, such fee being determined by the competent

ministry or by the T.E.E. in the manner described below. He may not pay it directly to the person commissioned to carry out the work.

...

4. Where the commissioning party refuses, hinders or delays payment of the deposit or of the fee owed, the T.E.E. shall have the capacity to bring legal proceedings for the recovery of the amount due ... by being subrogated ex officio to the rights of the payee.

5. In such cases, the T.E.E. shall inform the payee that it has introduced proceedings, after which it is freed from any liability in his regard, in particular from any obligation to pay him compensation. The payee or the T.E.E. are entitled at any moment to intervene in the proceedings."

Article 3

"1. The fees paid shall be deposited by the T.E.E. in a special bank account and a sum equivalent to 2% of the total fee shall be credited to the T.E.E.'s account with the Bank of Greece. ...

2. The remainder of the fee, after deduction of the percentages withheld and the charge payable for the professional licence, shall be paid to the payee by the T.E.E. or its authorised representative, free of interest.

...

4. The State shall pay directly to the payees the fees which it owes to them after having deducted 2% of such amounts, which is paid to the T.E.E."

46. The subrogation system set up by Royal Decree no. 30/1956 was initially intended to protect engineers from pressure being brought to bear on them to reduce excessively their fees, but also - and this remains the case - to secure the payment of a compulsory contribution of 10% (since reduced to 2%) to their insurance fund (Article 3). It is applicable only in respect of the recovery of fees payable for the design of projects and not for the supervision of work (Article 1).

The T.E.E. has the responsibility of instituting proceedings on the basis of the information provided by the engineer. Once the action has been brought, the latter may intervene (Article 2) and, by filing memorials or even by attending the hearing, support the arguments of the T.E.E., which remains the main party in the proceedings. By so intervening the engineer acquires the right to lodge appeals himself.

47. By a judgment of 17 April 1986 (no. 2827/1986) the Athens Court of Appeal ruled as follows:

"... it follows that under the above-mentioned provisions [Article 2 paras. 4 and 5 of Royal Decree no. 30/1956] the T.E.E. has not only a right (discretionary power), but also an obligation, to take legal proceedings on behalf of the engineer to recover fees. This interpretation ... is consistent with the prevailing case-law according to which the

payee has no right whatsoever to bring proceedings for the recovery of his remuneration. ... Consequently, in carrying out this obligation, the T.E.E. acts not as the engineer's representative but as an authority exercising an unfettered and exclusive right conferred on it by law"

48. In a judgment (no. 309/1986) the Court of Cassation held as follows:

"... it is clear from ... Articles 1 and 2 of Royal Decree no. 30 of 31 May 1956 ... that the Technical Chamber of Greece, which alone is entitled to collect the disputed remuneration, is subrogated to the rights of engineers, regardless of whether they are members. If it were otherwise the aim of the above-mentioned provisions would be frustrated, that aim being to safeguard the interests of the profession and to deter any competition as regards engineers' fees, liable to affect adversely the quality of the projects which they design".

49. On the other hand, in a judgment no. 8/1988 the Larissa Administrative Court of Appeal observed:

"Royal Decree no. 30 of 31 May 1956 ... provides in paragraphs 4 and 5 of Article 2 thereof: '... 5. In such cases, the T.E.E. shall inform the payee that it has introduced proceedings The payee or the T.E.E. are entitled at any moment to intervene in the proceedings'. It follows from these provisions that the T.E.E. has the right to take legal proceedings to secure the payment of remuneration owed to one of its members in respect of the design of a project only where the member in question has not done so himself. If the payee takes proceedings himself to recover the fees, the T.E.E. is entitled only to intervene in the proceedings".

50. The Court of Cassation had occasion to rule on a claim for compensation from an engineer who complained that the T.E.E. had not brought proceedings to recover his fees in sufficient time to avoid the action in question being time-barred. It considered that such negligence gave rise to a right to compensation, but only as from the moment at which the action became time-barred and at which the T.E.E. could therefore no longer bring it (judgment no. 25/1988).

C. The Code of Civil Procedure (Kodikas Politikis Dikonomias)

51. The Code of Civil Procedure provides as follows:

Article 68

"Capacity to bring proceedings of parties

Any person who can establish a direct legitimate interest may seek judicial protection."

Article 72

"Subrogation action (plagiastiki agogi)

Creditors may apply for judicial protection, exercising the rights of their debtors in the event of the latter's failure to exercise them, except rights of a close personal nature."

Article 80

"Intervention in support of one of the parties (apli prostheti paremvasi)

If, in proceedings pending before a court, a third party has an interest in the success of one of the parties, he may intervene in support of the claims of that party until final judgment has been given."

Article 82

"Procedural position of the intervener

The intervener may take all the steps in the proceedings in the interests of the party which he supports and is bound to accept any steps which have already been completed before his intervention. The steps which he takes shall be valid in so far as they are compatible with those of the main party in the proceedings ... "

Article 83

"'Autonomous' intervention (aftotelis prostheti paremvasi)

If the decision in the main proceedings affects the relationship between the intervener and the opposing party, the provisions of Articles 76 to 78 shall apply." (Articles "concerning common interest between the parties" - "omodikia")

D. Case-law concerning the subrogation action

52. The subrogation action was introduced into Greek law in 1834 in Chapter 5 of the Code of Civil Procedure and was considered to be an action for provisional measures and interlocutory relief. It is now governed by the general provisions of the first Chapter of the Code. It is generally agreed that this action is a *sui generis* action which aims at safeguarding the property of the debtor in the interests of the creditor. A person who brings the action must prove that he is the creditor of a debtor who has neglected to exercise his rights. The latter's insolvency is not a necessary condition for bringing the action.

In a judgment of 6 June 1988 (no. 7892/1988) concerning enforcement proceedings against a debtor, a private individual, who had just lost his action against the T.E.E., the Athens Court of Appeal stated as follows:

" ... between the T.E.E. and the engineer there is a 'quasi' debtor (the T.E.E.) - creditor (the engineer) relationship, which lasts for as long as the T.E.E. is under a statutory duty to secure the recovery of the fee and to pay it thereafter to the person to whom it is strictly due, the engineer ... It follows from the above-mentioned provisions

(Article 72 of the Code of Civil Procedure) that if the T.E.E. fails to institute proceedings for the recovery of fees or to bring an enforcement action for their payment, ... the engineer, as the payee, has a legitimate interest in doing so provided that he stipulates in his application that the amount in question is to be paid to the T.E.E. ... "

PROCEEDINGS BEFORE THE COMMISSION

53. Mr Philis lodged applications with the Commission on 5 January 1987 (application no. 12750/87), 6 April 1988 (application no. 13780/88) and 24 June 1988 (application no. 14003/88). He relied on Articles 6, 13 and 14 (art. 6, art. 13, art. 14) of the Convention and Article 1 of Protocol No. 1 (P1-1). With regard to Article 6 (art. 6), he claimed that he had not had a fair trial before an independent and impartial tribunal within a reasonable time; he also complained of a violation of his right of access to a court, on the ground that the T.E.E. had been subrogated ex officio to his right to recover the remuneration due in respect of a number of projects which he had designed.

54. The Commission ruled on the admissibility of the three applications on 7 December 1988 and 11 October 1989. It found admissible the complaints concerning the right of access to a court and the duration of the proceedings (Article 6) (art. 6) as well as that concerning Article 13 (art. 13); it declared the other complaints inadmissible.

On 8 March 1990 it ordered the joinder of the applications pursuant to Rule 29 of its Rules of Procedure. In its report of the same day (Article 31) (art. 31), it expressed the following opinion:

(a) unanimously that there had been a violation of the applicant's right of access to a court;

(b) by eleven votes to two that the case had not been heard within a reasonable time (application no. 13780/88);

(c) unanimously that no separate question arose under Article 13 (art. 13).

The full text of the Commission's opinion and the dissenting opinion contained in the report is reproduced as an annex to this judgment*.

* Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 209 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. SCOPE OF THE CASE

55. Mr Philis requested the Court to examine his complaints under Articles 6, 8, 13, 14 and 17 (art. 6, art. 8, art. 13, art. 14, art. 17) of the Convention and under Article 1 of Protocol No. 1 (P1-1), those Articles being taken both in isolation and in conjunction with one another. The Commission declared admissible only the allegations concerning the right of access to a court, the length of the proceedings and Article 13 (art. 13). However, the applicant argued that it had not expressly ruled on some of his other allegations and that the Greek legislation in this field, namely Act no. 1346/1983 (see paragraph 12 above), Royal Decree no. 30/1956 (see paragraph 45 above) and the Articles of the Code of Civil Procedure on the payment in advance of legal costs, constituted a permanent violation of the rights guaranteed under the Convention.

In the view of the Government and the Commission, on the other hand, the latter's decisions on admissibility defined the scope of the case brought before the Court; that scope was in their opinion clearly indicated in the operative part of the decisions of 7 December 1988 and 11 October 1989 (see paragraph 54 above).

56. Once a case is duly referred to it, the Court may take cognisance of every question of law arising in the course of the proceedings and concerning the facts submitted to its examination by a Contracting State or by the Commission. Being master of the characterisation to be given in law to these facts, the Court is empowered to examine them if it deems it necessary and if need be of its own motion, in the light of the Convention as a whole (see, among many other authorities, the Handyside judgment of 7 December 1976, Series A no. 24, pp. 19-20, para. 41).

Having regard to all the evidence before it, the Court considers that it can also examine the complaint based on Article 14 (art. 14) of the Convention (see paragraph 68 below) because it relates to the same facts as the complaints under Articles 6 and 13 (art. 6, art. 13). On the other hand, it agrees with the Government and the Commission that the other Articles relied on should not be taken into account.

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

57. The applicant alleged two violations of Article 6 para. 1 (art. 6-1), which is worded as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal"

In the first place he claimed that he had been refused access to a court to seek the remuneration payable in respect of a number of projects which he had designed. In addition, the Athens Court of Appeal, ruling on his dispute with the Penteli Children's Hospital (see paragraphs 34-36 above), had not, in his submission, given its decision "within a reasonable time".

A. Access to a court

58. The applicant argued that he was deprived of his right of access to a court by Royal Decree no. 30/1956, according to the terms of which only the T.E.E. was empowered to bring an action for the recovery of fees (see paragraph 45 above). This meant that he was dependent on the intervention of a third party, which situation did not make it possible for him to pursue the main proceedings at the time and in the manner which he considered to be the most appropriate, to have the benefit of the assistance of counsel of his choice, to ensure that the action was well "targeted", to institute subsidiary actions and to claim compensation. He was able to participate in person in the proceedings only for the purpose of supporting the T.E.E.'s arguments and did not therefore have effective control of them. The aim of the disputed Royal Decree was, he argued, in reality the "violation of engineers' right of access to a court and the unlawful withholding and exploitation of their fees"; even supposing that it pursued a legitimate aim, there was a flagrant disproportion between that aim and the means employed.

The Government contested this view. In their opinion, a restriction on the right of engineers to institute proceedings in the courts, should the Court find that there was one, would not be contrary to Article 6 (art. 6). The Royal Decree sought only to protect the rights and interests of engineers by guaranteeing a "compulsory minimum scale of fees". Furthermore, the means employed were consistent with that objective. The notion of rights being subrogated to a third party, which had very deep roots in Greek law, was introduced in this area at the express request of engineers, who wished for a more effective and vigorous protection of their rights: in the event of non-payment of their fees, they would be reluctant to sue their clients; in any case, they were paid their fees more easily and more rapidly as a result of the deposit of the amount owed with a professional association responsible for paying them over at a later stage.

59. The Court recalls that in its judgments in the Golder case of 21 January 1975 and the Ashingdane case of 28 May 1985 (Series A no. 18, p. 18, para. 36, and no. 93, pp. 24-25, para. 57), it held that Article 6 para. 1 (art. 6-1) secured to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way the Article embodies the "right to a court", of which the right of access, that is

the right to institute proceedings before courts in civil matters, constitutes one aspect.

This right of access, however, is not absolute but may be subject to limitations since the right by its very nature calls for regulation by the State. Nonetheless the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired.

60. As the Government stressed, the requirements of Article 6 (art. 6) - which is moreover directly applicable in the Greek domestic legal system and, according to Article 28 of the Greek Constitution of 1975, is of higher authority than domestic legislation - were implemented in Greece both by Article 20 of the Constitution (see paragraph 44 above) and by Article 68 of the Code of Civil Procedure (see paragraph 51 above).

In addition to these provisions of a general nature, however, Greek legislation also lays down special rules applying to various socio-professional categories, such as Royal Decree no. 30/1956, Article 2 para. 4 of which would indeed appear to confer on the T.E.E. the exclusive right to take legal proceedings to recover the fees of engineers by its being subrogated ex officio to the latter's rights (see paragraph 45 above).

According to the Government, this legislation does not expressly preclude the persons concerned from themselves instituting proceedings; the T.E.E.'s capacity to bring proceedings is "parallel" to that of the true beneficiaries but does not exclude it, otherwise Article 2 para. 5 of the Decree (see paragraph 45 above) would have no point. In support of this position they referred to a judgment of the Larissa Administrative Court of Appeal (see paragraph 49 above) and the opinion of certain academic writers, to the effect that the disputed provisions do not conflict with Article 68 of the Code of Civil Procedure (see paragraph 51 above).

61. It is not for the Court to assess the merits of the Greek system for the payment of engineers' fees as such; it will therefore confine itself, in so far as possible, to examining the issues raised by the specific case before it. In order to do so, however, it must examine the provisions in question to the extent to which the impediment to the individual's right of access was in fact the result of their application (see, *mutatis mutandis*, the Mellacher and Others judgment of 19 December 1989, Series A no. 169, p. 24, para. 41).

There are indeed advantages flowing from the system in question: by representing engineers in the courts, the T.E.E. provides them, in return for a small percentage, with the services of experienced counsel and it bears in addition the legal costs and the lawyers' fees, which less well-off engineers would sometimes find it difficult to pay. The wording used in paragraphs 4 and 5 of Article 2 is however ambivalent, with the result that there has been disagreement among academic writers and in the case-law as to their implications. Read literally, Royal Decree no. 30/1956 confers on the T.E.E.

the exclusive capacity to bring proceedings on behalf of engineers. Existing practice is consistent with this interpretation.

In accordance with such practice, Mr Philis requested the T.E.E., in connection with his disputes with the A.O.E.K. and A.S., to bring proceedings in the courts. When he himself sued the P.I.K.P.A and the P.N.P. in the Athens Court of Appeal, that court dismissed his action on the ground that he lacked the requisite capacity (see paragraph 36 above).

62. This practice is confirmed by the prevailing case-law. In its judgment no. 2827/1986 (see paragraph 47 above), the Athens Court of Appeal held that "the T.E.E. ... acts not as the engineer's representative, but as an authority exercising an unfettered and exclusive right conferred on it by law ... ". For its part, the Court of Cassation decided that the T.E.E. was subrogated ex officio to the rights of engineers even where they were not members of the T.E.E. (judgment no. 309/1986 - see paragraph 48 above). It also recognised that, where the T.E.E. did not bring an action for the recovery of fees in sufficient time to prevent the action in question being time-barred, such negligence gave rise to a right to compensation; it did not enquire into whether there had been contributory negligence in so far as the person concerned had not tried to bring proceedings himself (judgment no. 25/1988 - see paragraph 50 above). The judgment of the Larissa Administrative Court of Appeal cited by the Government does appear to be clearly out of line with the case-law.

63. The Government contended that, notwithstanding the effect of the system described above, the applicant could have asserted his rights in person through the numerous means available to him in Greek civil procedure. He could have intervened "autonomously" in the proceedings brought by the T.E.E., a possibility of which he had moreover availed himself by virtue of Article 2 para. 5 of Royal Decree no. 30/1956, in conjunction with Article 83 of the Code of Civil Procedure (see paragraphs 45 and 51 above); he could have lodged a third party objection (*tritanakopi* - Article 586 of the Code of Civil Procedure) to a judgment delivered in breach of the requirements of Article 2 para. 5 of Royal Decree no. 30/1956 (see paragraph 45 above); he could have brought an action for damages (Article 914 of the Civil Code) against the T.E.E., which had, by its conduct, allegedly caused him damage; finally, he could have brought a subrogation action under Article 72 of the Code of Civil Procedure (see paragraph 51 above).

The principal condition for the exercise of the last-mentioned remedy was satisfied. The engineer was entitled to sue his clients on his own initiative, provided that he asked that the fees be paid to the T.E.E. This right of the true beneficiary was derived from the rules on subrogation and came into being with the engineer's right to receive his remuneration.

64. This reasoning does not persuade the Court.

Intervention and third party objection are possible only once the proceedings have been instituted by the T.E.E., whereas the action for damages makes it possible for the engineer to claim compensation, but not his fees as such.

As to the subrogation action, the prevailing case-law of the Greek courts indicates that the general provision of Article 72 of the Code of Civil Procedure does not override the specific provision of Article 2 para. 4 of Royal Decree no. 30/1956, notwithstanding that it may be possible to regard the T.E.E. as a debtor in relation to the engineer before the payment of the remuneration. The Court, like the Commission, notes in particular that the sole judgment invoked by the Government in support of their view concerned the enforcement of a judgment which had awarded the T.E.E. the sum in dispute by a final decision (see paragraph 52 above).

65. In conclusion, since the applicant was not able to institute proceedings, directly and independently, to seek the payment from his clients - even to the T.E.E. in the first instance - of fees which were owed to him, the very essence of his "right to a court" was impaired, and this could not be redressed by any remedy available under Greek law.

There has therefore been on this point a violation of Article 6 para. 1 (art. 6-1).

B. Length of proceedings

66. Mr Philis also complained that the Athens Court of Appeal took more than three years to give its decision which, in any event, was confined to dismissing his action on the ground that he lacked capacity to bring proceedings (see paragraphs 34-36 above). It had therefore failed to rule within a "reasonable time".

In the light of the finding set out in the preceding paragraph, the Court does not consider it necessary to examine this complaint.

III. ALLEGED VIOLATION OF ARTICLE 13 (art. 13)

67. Mr Philis maintained further that no effective remedy had been available to him before a national "authority" to complain of the breach of his right of access to a court. There had therefore been a violation of Article 13 (art. 13), which is worded as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Having regard to its decision concerning Article 6 (art. 6), the Court, like the Commission, takes the view that it does not have to examine the case under Article 13 (art. 13) as its requirements are less strict than, and are here

absorbed by, those of Article 6 (art. 6) (see, among many other authorities, the Håkansson and Stureson judgment of 21 February 1990, Series A no. 171-A, p. 21, para. 69).

IV. ALLEGED VIOLATION OF ARTICLE 14, IN CONJUNCTION WITH ARTICLE 6 PARA. 1 (art. 14+6-1)

68. According to Article 14 (art. 14) of the Convention,

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The applicant claimed to be the victim of a twofold discrimination incompatible with this provision.

In the first place, the provisions of Act no. 1346/1983 which were retrospective in effect were directed at him personally and had been applied exclusively in his cases pending in the courts. As evidence of this he cited the express reference to his name in the record of the parliamentary debates prior to the voting of this Act. Secondly, the profession of engineer was the only profession whose members did not have the benefit of direct access to the courts to assert their civil rights.

In its decision of 7 December 1988 on the admissibility of the application, the Commission rejected the first complaint because it concerned a period prior to 20 November 1985, when the Greek declaration accepting the right of individual petition took effect. Accordingly, the Court may not entertain it.

As to the second complaint, the Court has already observed that the restriction on Mr Philis's right of access to a court infringed Article 6 (art. 6). This being so, it considers that no useful purpose is to be served in determining whether he has in addition suffered discrimination as compared with other persons who are subject to lesser limitations on the same right (see, *mutatis mutandis*, the Dudgeon judgment of 22 October 1981, Series A no. 45, p. 26, paras. 67-70).

V. APPLICATION OF ARTICLE 50 (art. 50)

69. Under Article 50 (art. 50),

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

The applicant sought compensation for damage and the reimbursement of costs and expenses. He also requested the Court to specify that the sums awarded should be exempt from attachment.

A. Damage

1. Pecuniary damage

70. Mr Philis asked the Court to award him "full compensation", on the ground that the outcome of the disputed proceedings would unquestionably have been in his favour had there been no breach of the Convention. In this connection he claimed a total sum of 582,889,280 drachmas, plus amounts to cover, for the period from 31 December 1988 to the date of the last payment, inflation, currency depreciation and due interest. The violation of Article 6 (art. 6) had also interfered with the exercise of his profession during the last five years, depriving him of earnings which he assessed at a minimum of 100,000,000 drachmas.

The Government contended that there was no causal connection between the damage sustained and the alleged breach. If however the Court should find otherwise, Greek law - in particular Sections 105 and 106 of the "Introductory Act" to the Civil Code (right to compensation in the event of judicial error) - made available to the applicant the possibility of *restitutio in integrum*; in any event, a finding of a violation would constitute sufficient just satisfaction.

71. The Court cannot speculate as to the conclusions which the national courts would have reached had Mr Philis been able to bring legal proceedings himself. As no causal connection has been established, it dismisses the claims concerning the amounts sought from the A.O.E.K., the P.N.P. and A.S. and the alleged loss of earnings.

2. Non-pecuniary damage

72. In respect of non-pecuniary damage, the applicant sought compensation of 300,000,000 drachmas. He maintained that for a period of ten years he had suffered from great psychological pressure because he had lived in a state of uncertainty and despair with regard to the conduct and outcome of the proceedings pending in the courts and their repercussions on his financial position.

The Government considered that Mr Philis had not sustained any such damage, but left the question to be determined by the Court.

73. The feeling of frustration generated by the impossibility of assuming control of the defence of his own interests, as well as the prolonged anxiety as to the outcome of his disputes with his debtors, must have caused the applicant some non-pecuniary damage. Making an assessment on an

equitable basis in accordance with Article 50 (art. 50), the Court awards him 1,000,000 drachmas under this head.

B. Costs and expenses

74. The applicant also claimed the payment of legal costs and lawyers' fees together with an amount for the work which he had carried out in connection with the case.

According to the established case-law of the Court, to be awarded costs and expenses the injured party must have incurred them in order to seek prevention or rectification of a violation of the Convention, to have the same established by the Commission and later by the Court and to obtain redress therefor. It must also be shown that the costs were actually and necessarily incurred and that they are reasonable as to quantum.

1. Costs referable to the national proceedings

75. Mr Philis claimed 21,312,160 drachmas for lawyers' fees, as well as for other miscellaneous expenses incurred during the proceedings brought, from 1978 to 1986, either by himself (see paragraph 9 above) or by the T.E.E.; he provided a detailed list of these expenses.

According to the Government, these costs were not incurred in order to protect the right of access to the Greek courts or to speed up the progress of the proceedings before them; accordingly, they cannot give rise to reimbursement.

76. The Court observes that the costs incurred by the applicant in the Greek courts related to the substance of the disputes and not to the problem of access to a court.

It notes nevertheless that his interventions in the proceedings instituted by the T.E.E. against the A.O.E.K. and his own action against the P.N.P. constituted for him the sole means whereby he could seek to remedy the deficiency of Greek law. It therefore takes the view, in agreement with the Delegate of the Commission, that Mr Philis must be reimbursed the corresponding costs to the extent that they were actually incurred, necessarily incurred and reasonable. As some of the claims appear to be excessive, the Court can only award him in this respect the sum of 4,000,000 drachmas, assessed on an equitable basis.

2. Costs referable to the European proceedings

77. Mr Philis was not assisted by a lawyer before the Commission. He claimed 6,375,000 drachmas for the work carried out by him and 911,120 drachmas for miscellaneous and travel expenses.

The Government agreed to reimburse the costs resulting from the applicant's journeys to Strasbourg and certain other expenses, but in their

view the sum to be awarded in this respect should correspond to the scales established by the Commission for legal aid. They stated that they were willing to pay 1,000,000 drachmas.

The Court observes that the applicant presented his own case before the Commission and appeared in person before it; he incurred substantial costs, which he has itemised. Accordingly, and having regard to the Government's observations, it considers that on the basis of an equitable assessment he should be awarded 1,000,000 drachmas under this head.

78. Before the Court, the President authorised Mr Philis to submit a memorial himself and to address the Court at the hearing; he also agreed to accord him legal aid.

Nevertheless, the applicant claimed 1,632,770 drachmas and 3,226 French francs in respect of lawyer's fees and expenses together with 544,900 drachmas for miscellaneous expenses. He also sought 3,750,000 drachmas to cover his own work, 300,000 for his attendance at the hearing and 275,000 for his presence at the delivery of the Court's judgment.

The Government and the Commission pointed out that the applicant had not established that he had incurred commitments exceeding the amounts paid as legal aid.

Having regard to the memorandum accompanying the claim submitted under Article 50 (art. 50), and to the sums received from the Council of Europe, the Court awards the applicant 1,000,000 drachmas in respect of his lawyer's fees and expenses.

Of Mr Philis's travel expenses, only those resulting from his participation in the hearing could be taken into account, but they are already covered by legal aid. Finally, the Court, making an assessment on an equitable basis, considers that the applicant should be awarded 800,000 drachmas to cover his general expenses.

C. Request for a declaration that the sums in question should be exempt from attachment

79. The applicant asked the Court to specify in its judgment that the sums awarded under Article 50 (art. 50) should be exempt from attachment.

The Court takes the view that it is not in a position to accede to this request.

FOR THESE REASONS, THE COURT

1. Holds by eight votes to one that there has been a violation of the right of access to a court, guaranteed under Article 6 para. 1 (art. 6-1);

2. Holds unanimously that it is not necessary to determine whether in addition a "reasonable time" within the meaning of the same Article (art. 6-1) was exceeded;
3. Holds unanimously that it is likewise not necessary to examine the case either under Article 13 or under Article 14 in conjunction with Article 6 (art. 13+6, art. 14+6);
4. Holds unanimously that the respondent State must pay to the applicant 1,000,000 (one million) drachmas for non-pecuniary damage and 6,800,000 (six million eight hundred thousand) drachmas for costs and expenses;
5. Dismisses unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 27 August 1991.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the dissenting opinion of Mr Pettiti is annexed to this judgment.

R.R.
M.-A.E.

DISSENTING OPINION OF JUDGE PETTITI

(Translation)

I did not vote with the majority for a violation of Article 6 para. 1 (art. 6-1). In my view the applicant has not been deprived of his right to a court or of his right of access to a court within the meaning of the Golder judgment.

It is true that ex officio subrogation, provided for in Decree no. 30 of 31 May 1956, occurs in the event of the refusal of the debtor (the engineer's client) to pay. Under Article 2 para. 5 of the Decree, in conjunction with Article 83 of the Code of Civil Procedure, the creditor retains the right to intervene at any moment in the proceedings. It does not seem to me that this provision takes away the right to bring proceedings or is prejudicial to the payee, even though it alters the manner in which that right may be exercised.

I do not consider it to have been established that, where the T.E.E. refuses to exercise the right to bring proceedings, the person concerned is definitively deprived of his right of action except in order to seek payment of the fees to the T.E.E. The Athens Court of Appeal, in its judgment of 16 November 1987, did indeed state that only the T.E.E. had capacity to bring proceedings for the recovery of fees, but in the light of the decision of the Larissa Administrative Court of Appeal (judgment 8/1988) it remains possible for the payee to take proceedings in person to recover his fees or to sue the T.E.E. if the latter refuses to institute proceedings or has been negligent in carrying out its duties under the subrogation system. Furthermore, the engineer also has available to him the "subrogation action" under Article 72 of the Code of Civil Procedure, which is a clause of general application.

Since there is no consistent and definitive case-law from the Court of Cassation on this question of principle (judgment 309/1986 being of limited scope), I am of the opinion that it is premature to find the Greek Government to be in breach of Article 6 (art. 6).