AS TO THE ADMISSIBILITY OF

Application No. 24537/94
by Petros DIKIGOROPOULOS
against Cyprus

The European Commission of Human Rights (Second Chamber) sitting in private on 22 February 1995, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

Mr. K. ROGGE, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 9 March 1994 by Petros DIKIGOROPOULOS against Cyprus and registered on 5 July 1994 under file No. 24537/94;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Cypriot citizen, born in 1926 in Cyprus, currently residing in Strovolos, Cyprus.

The facts of the case, as they have been submitted by the applicant, may be summarised as follows:

A. Particular circumstances of the case

In April 1988 the applicant travelled to the United Kingdom to undergo open heart surgery at the expense of the state of Cyprus. The applicant's displacement was authorised by the Ministry of Health under the plan for the sending of patients for treatment abroad at the expense of the Republic. Before leaving Cyprus, however, the applicant made the following declaration:

> "I declare that I undertake to reimburse, when I return to Cyprus after my treatment abroad, to the Medical and Public Health Services of the Republic any amount which the competent authorities, after examining my financial situation, will decide that I have to reimburse."

On the applicant's return to Cyprus, the Social Welfare Department of the Ministry of Health prepared a report on the applicant's social and economic situation. On 2 March 1989 the General Director of the Ministry of Health considered, on the basis of the

report, that the applicant should reimburse to the State an amount corresponding to his travel expenses and the expenses incurred by him for food and accommodation during his stay in the United Kingdom outside hospital. The report was transmitted to the Ministry of Finance which was invited to express its views.

On 23 March 1989 the General Director of the Ministry of Finance notified the General Director of the Ministry of Health that he disagreed with his assessment. In the view of the Director of the Ministry of Finance, the applicant should reimburse all expenses. According to his experience and relevant information he had gathered from the Ministry of Education, the Director of the Ministry of Finance considered that the income of the applicant, who was operating the canteen of the Technical School of Nicosia, must be very high. The Director proposed the drafting of a new report on the applicant's situation.

Such a report was submitted on 27 September 1989. It concluded that the applicant's situation was very satisfactory and that he was in a position to contribute significantly towards the cost of his treatment abroad. Thereupon the Ministry of Health decided that the applicant should reimburse the State CYP 10,948, a sum corresponding to the entire cost of his treatment abroad. The decision was notified to the applicant on 3 November 1989.

The applicant challenged the decision before the Supreme Court relying on the following four grounds of appeal. First, domestic law had been violated since the disagreement between the Ministries of Health and Finance should have been resolved at ministerial level and the opinion of the Director of the Ministry of Health should have been obtained for a second time before the applicant was ordered to pay the sum at issue.

Secondly, the decision ordering him to pay the sum was not based on a proper and full enquiry into his situation. More in particular, the first report was ignored, although it contained relevant and accurate information, for example that the applicant was not liable to pay any income tax in 1987. The second report was, on the contrary, relied on, although it was contradictory and based on information provided by an incompetent organ, the Ministry of Education. The second report did not contain any information on the applicant's family situation. The Minister, moreover, overlooked the conclusions of the second report, which had only recommended that the applicant make a substantial contribution, and ordered him to reimburse the entire sum without giving any reasons.

Thirdly, the Ministry of Health in issuing the decision did not exercise discretionary powers, considering itself bound by the opinion of the Ministry of Education. Fourthly, the decision was not adequately reasoned.

On 18 January 1991 a single judge of the Supreme Court pronounced on the applicant's appeal. Giving a general interpretation of the relevant domestic law, the judge considered that the Minister of Health was exercising discretionary powers when deciding whether a particular individual should bear, in the light of his social and financial situation, part or the entirety of the costs of his treatment abroad.

The single judge then rejected a preliminary objection, raised by the State and opposed by the applicant, to the effect that the dispute was of a private law nature coming within the competence of the civil courts.

As regards the applicant's first ground of appeal, the judge considered that national law had not been violated, since the two Ministries found themselves in complete agreement at the end of the day and there was no reason for the Director of the Ministry to express a

fresh opinion.

As regards the applicant's second ground, the judge considered that the enquiry into the applicant's situation was in every respect adequate. The Minister took into consideration the information contained in both reports which formed an inseparable whole. The first report contained adequate information on the applicant's social situation, there was nothing improper in seeking the assistance of the Ministry of Education and the Minister was under no obligation to justify his reaching a different conclusion than the report.

As regards the third ground of appeal, the judge considered that the decision complained of was reached by the competent organ which did not consider itself in any manner bound by the report. The fourth ground of appeal was finally dismissed on the basis that the decision was reasonable and within the limits of the organ's discretionary powers. It was also adequately reasoned, the reasons actually provided being supplemented by the contents of the administrative file. As a result, the applicant's appeal was rejected.

The applicant appealed against the decision of the single judge to the Supreme Court, sitting in plenary, relying on the first two of the above-mentioned four grounds. On 14 October 1993 the Court rejected the appeal, considering that the procedural requirements of national law had been fully respected and that the enquiry into the applicant's situation was in every respect adequate. The Minister had the right to reach a different conclusion as to the applicant's ability to contribute to the cost of his treatment abroad.

B. Relevant domestic law

Regulation 10 of the plan for the sending of patients for treatment abroad at the expense of the Republic provides the following:

"1. Taking into consideration the financial position of the patient or his family and on the basis of a social-economic report prepared by the Department of Social Welfare of the District Officer which is submitted to the Ministry of Health, the patient may be released fully from the costs, or be charged to pay part of all the costs of travelling and treatment as well as any other costs relevant to his treatment abroad.
.....

3. The decision for undertaking to pay part or all of the costs of sending a patient abroad is taken by the Director General of the Ministry of Health with the consent of the Director General of the Ministry of Finance."

COMPLAINTS

The applicant complains of a violation of Article 6 para. 1 of the Convention in that the Ministry of Finance unilaterally determined his civil liabilities towards the State and, as a result, his civil rights and obligations were determined without a procès contradictoire.

THE LAW

The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that he did not have the benefit of an adversarial procedure in the determination of his civil rights and obligations.

Article 6 para. 1 (Art. 6-1) of the Convention guarantees the right to a fair hearing in the determination of civil rights and obligations.

The Commission, however, does not consider it necessary to examine whether the proceedings at issue involved the determination of the applicant's civil rights and obligations. Even assuming that Article 6 para. 1 (Art. 6-1) of the Convention applies, the Commission considers that the facts before it disclose no appearance of a violation of the requirements of this provision.

The Commission notes in this connection that the applicant did not allege before the Supreme Court that there was a misconception of the facts on which the Minister's decision was based. It also notes that in its judgments of 18 January 1991 and 14 October 1993 the Supreme Court considered the applicant's submissions on their merits, point by point, and replied to them.

Having regard to all the above as well as to the respect which must be accorded, in accordance with the case-law of the Court, to decisions taken by the administrative authorities on grounds of expediency and to the nature of the complaints raised by the applicant (cf. Eur. Court H.R., Zumtobel judgment of 21 September 1993, Series A no. 268, p. 14, para. 32), the Commission considers that the review exercised by the Supreme Court in the present case discloses no appearance of a violation of the requirements of Article 6 para. 1 (Art. 6-1) of the Convention

As a result, the application must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber	President of the Second Chamber
(K. ROGGE)	(H. DANELIUS)