AS TO THE ADMISSIBILITY OF

Application No. 28130/95
by Lefkos P. GEORGIADES
against Cyprus

The European Commission of Human Rights (First Chamber) sitting in private on 29 November 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
L. LOUCAIDES
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, 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 19 May 1995 by Lefkos P. GEORGIADES against Cyprus and registered on 4 August 1995 under file No. 28130/95;

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. He was born in 1919 in Cyprus and is currently resident in Nicosia.

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

Between November 1941 and September 1953 the applicant worked for the British Colonial Government in Cyprus. Between September 1953 and 1960 he worked for the United Nations. Between 1961 and 1963 he worked as a civil servant for the Republic of Cyprus. In 1963 he was appointed ambassador. He retired in 1979.

In 1979 the applicant applied to the Council of Ministers for a pension in respect of his years of service with the colonial Government. On 31 May 1979 the Council of Ministers rejected his request.

The applicant challenged the relevant decision before the Supreme Court of Justice, which rejected his recourse on the ground that the applicant had accepted the conditions of his appointment in 1961 and 1963 without claiming recognition of his previous service. As a result,

he had no longer interest to sue. The court further considered that a promise allegedly made to the applicant by the then President of Cyprus that his previous years of service would be recognised had no legal effect.

On 10 May 1990 and 31 May 1990 the applicant re-applied to the Council of Ministers claiming equality of treatment with certain individuals to whom the Council of Ministers had granted pensions in respect of their years of service with the colonial government, notwithstanding the fact that they had subsequently joined international organisations, on the basis that their appointment in those organisations was in the public interest. On 7 July 1990 the applicant challenged before the Supreme Court the failure of the Council of Ministers to examine his request.

On 25 August 1990 the applicant received a reply from the Ministry of Finance, which rejected his request referring him to the 1979 decision of the Council of Ministers.

On 15 December 1990 a single judge of the Supreme Court rejected the applicant's recourse. The judge considered that it was clear that the applicant's recourse was not directed against the decision of 25 August 1990 of the Ministry of Finance. Insofar as the recourse was directed against the failure of the Council of Ministers to reply to the applicant's request, the court considered that there was no such failure, since the applicant had in the meantime received a reply from the Ministry of Finance. As for the rest, the court considered that the applicant's complaints had been answered by the previous decision of the Supreme Court.

On 29 December 1990 the applicant appealed to the Supreme Court sitting in plenary. The latter rejected his appeal on 31 March 1995. The court considered that it was within the discretionary powers of the Council of Ministers to accept or reject the applicant's request for a pension. Under Cypriot law one could not challenge the failure of an authority to exercise a discretionary power. Only when the authority exercises the discretion and takes a decision can the decision be challenged. In this case the Council of Ministers failed to exercise discretionary powers. As a result, the failure of the Council of Ministers to reply to the applicant's request for a pension could not be challenged before the Supreme Court. The action had to be rejected ab limine, as there was no basis for the Supreme Court to exercise its jurisdiction.

COMPLAINTS

1. The applicant complains under Article 1 of Protocol No. 1 of a violation of his right to receive a pension for his years of service with the colonial Government.

2. He also complains under Article 6 of the Convention of the failure of the Supreme Court in 1995 to take into consideration all the issues presented to it and of the length of the second set of proceedings.

THE LAW

1. The applicant complains under Article 1 of Protocol No. 1 (P1-1) that he was not granted a pension for his years of service with the colonial Government.

The Commission does not consider it necessary to examine whether the applicant could claim any "property rights" within the meaning of Article 1 of Protocol No. 1 (P1-1), because it considers that the applicant has not complied with the requirements of Article 26 (Art. 26) of the Convention.

Article 26 (Art. 26) of the Convention provides as follows:

> "The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

The Commission notes that the applicant's second request for a pension was rejected by a decision of the Ministry of Finance on 25 August 1990. The applicant did not challenge this decision before the Supreme Court, as he was entitled to under domestic law. As a result, even if it were assumed that the applicant's second request for a pension was not essentially the same as that which had been rejected in 1979, the complaint is inadmissible, because the applicant failed to exhaust domestic remedies under Article 26 (Art. 26) of the Convention.

This part of the application must be, therefore, rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant complains under Article 6 (Art. 6) of the Convention of the length of the proceedings he instituted before the Supreme Court in 1990 and of the failure of the Supreme Court to take into consideration all the issues presented to it in these proceedings.

Article 6 para. 1 (Art. 6-1) of the Convention of the Convention provides as follows:

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

The Commission recalls that, in accordance with its case-law, a tribunal which rejects a claim on procedural grounds is not determining a dispute on civil rights and obligations (No. 10865/84, Dec. 12.5.86, D.R. 47 p. 188). It notes that the Supreme Court rejected ab limine the applicant's recourse in 1995 finding no basis for exercising its jurisdiction, since the failure of the Council of Ministers to reply to the applicant's request for a pension could not be challenged before the Supreme Court. The Commission, therefore, concludes that the Supreme Court did not determine a dispute on civil rights and obligations and that the proceedings complained of fall outside the scope of Article 6 (Art. 6) of the Convention.

It follows that the Commission has no competence ratione materiae to examine this part of the application which must be rejected in accordance with Article 27 para. 2 (Art. 27-2) as being incompatible with the provisions of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber	President of the First Chamber
(M.F. BUQUICCHIO)	(C.L. ROZAKIS)