AS TO THE ADMISSIBILITY OF

Application No. 26643/95
by Evristhenis GEORGIADIS
against Greece

The European Commission of Human Rights (First Chamber) sitting in private on 18 January 1996, the following members being present:

Mrs. J. LIDDY, Acting President
MM. C.L. ROZAKIS
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
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 24 March 1994 by Evristhenis GEORGIADIS against Greece and registered on 7 March 1995 under file No. 26643/95;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 10 October 1995 and the observations in reply submitted by the applicant on 14 November 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Greek citizen, born in 1940 and resident in Thessaloniki (Greece).

The facts of the case as submitted by the parties may be summarised as follows.

On 24 March 1987 the applicant was arrested in his shop in Thessaloniki on suspicion of receiving stolen goods (kleptapodohi) and was taken to a police station, where he was held in custody. The applicant alleges that after his arrest he was gravely assaulted by police officers and required hospital treatment. The applicant took several actions for damages against the police which were rejected in 1988.

Following his arrest, several criminal proceedings for repeated theft (klopes kat'exakolouthisi) and receiving stolen goods have been

instituted in Athens and Thessaloniki against the applicant.

Proceedings before the Athens Courts

1. On 4 November 1991, by its judgment No. 2221-2224/1991, the Athens three-member Criminal Court (Trimeles Efeteio Kakourgimaton) convicted the applicant for repeated theft and conspiracy to theft (systasi ke symmoria) and sentenced him to six years' imprisonment. The same day the applicant lodged an appeal against this judgment. The hearing of the appeal was scheduled to take place on 26 January 1994 and then was adjourned until 11 May 1994.

On 11 May 1994, by its judgment No. 762/1994, the Athens five-member Criminal Court of Appeal (Pentameles Efeteio Kakourgimaton) rejected the applicant's appeal and sentenced him to five years and six months' imprisonment.

On 8 June 1994 the applicant appealed in cassation (anairesi) against judgment No. 762/1994. The hearing was scheduled on 11 November 1994 and then was adjourned at the request of the applicant's lawyer until 9 December 1994.

On 22 December 1994 the Court of Cassation (Areios Pagos) rejected the applicant's appeal in cassation on the ground that it was unsubstantiated.

2. On 26 February 1993, by its judgment No. 16951/1993, the Athens three-member First Instance Court (Trimeles Plimmeleiodikeio) convicted the applicant for theft and receiving of stolen goods and sentenced him to seven months' imprisonment. The applicant lodged an appeal against this judgment. The hearing was scheduled on 11 October 1993 and then was adjourned until 15 July 1994 when it was again adjourned sine die.

On 2 June 1995, by its judgment No. 6071/1995, the Athens three-member First Instance Court discontinued the criminal proceedings against the applicant on the ground that the offences with which he was charged had been prescribed in the meantime.

Proceedings before the Thessaloniki Courts

1. On 23 September 1991, by its judgment No. 466-470/1991, the Thessaloniki three-member Criminal Court convicted the applicant for receiving and handling stolen goods (apodohi ke diathesi proïonton eglimatos kat'epaggelma) and sentenced him to three years' imprisonment. The applicant lodged an appeal against this judgment. The hearing was scheduled on 1 December 1992 and then was adjourned because the members of the Thessaloniki Bar were on strike. On 2 March 1993 the hearing was further adjourned for the same reason until 25 May 1993.

On 25 May 1993 the lawyer of the applicant's co-accused asked for an adjournment in order to study his client's case-file. A new hearing was scheduled on 5 October 1993. In view of the parliamentary elections which had been scheduled to be held on 10 October 1993, the hearing was further adjourned until 12 April 1994.

On 12 April 1994, by its judgment No. 252-253/1994, the Thessaloniki five-member Court of Appeal rejected the applicant's appeal and sentenced him to two years' imprisonment.

2. By its judgment No. 7508/1992, the Thessaloniki three-member First Instance Court sentenced the applicant to forty days' imprisonment.

3. On 28 April 1993, by its judgment No. 295/1993, the Thessaloniki three-member Criminal Court convicted the applicant for receiving and handling stolen goods and sentenced him to two years' imprisonment. The hearing, initially scheduled on 2 October 1989, was adjourned several

times, mainly because the members of the Thessaloniki Bar were on strike.

On 18 July 1994, by its decision No. 1132/1994, the Athens five-member Court of Appeal, having regard to decisions Nos. 7508/1992, 295/1993, 252-253/1994 and 762/1994, imposed to the applicant a global sentence of seven years, two months and twenty days' imprisonment.

Applications for provisional release

On 21 August 1994 the applicant lodged an application with the Indictment Chamber of the Larissa First Instance Court (Symvoulio Plimmeliodikon) for provisional release. His request was rejected on 18 November 1994 on the ground of bad conduct. On 1 December 1994 the applicant lodged an appeal against this decision which was rejected on 31 January 1995 by the Indictment Chamber of the Larissa Court of Appeal (Symvoulio Efeton).

On 8 February 1995 the applicant lodged a second request with the Indictment Chamber of the Larissa First Instance Court for provisional release. His request was rejected on 24 March 1995 on the ground of bad conduct. On 3 April 1995 he applicant lodged an appeal against this decision which was rejected on 19 May 1995 by the Indictment Chamber of the Larissa Court of Appeal.

On 21 June 1995 the applicant lodged a new request with the Indictment Chamber of the Pireaus First Instance Court for provisional release.

On 25 August 1995, by judgment No. 649/1995 of the Indictment Chamber of the Pireaus First Instance Court, the applicant was released on parole.

COMPLAINT

The applicant complains of the length of the criminal proceedings against him. He invokes Article 6 para. 1 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 24 March 1994 and registered on 7 March 1995.

On 28 June 1995 the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The Government's written observations were submitted on 10 October 1995. The applicant replied on 14 November 1995.

On 24 October 1995 the Commission granted the applicant legal aid.

THE LAW

The applicant complains of the length of the criminal proceedings against him. He invokes Article 6 para. 1 (Art. 6-1) of the Convention which reads as follows:

> "In the determination of (...) any criminal charge against him everyone is entitled to a (...) hearing within a reasonable time (...)."

The Government submit that the case was particularly complex involving several accused persons and several offences. Both the first and second instance courts as well as the Court of Cassation which heard the applicant's case were overburdened with work, as a result,

inter alia, of the lawyers' strike for which the Government cannot be held responsible.

The Government further submit that the applicant did not take any steps to expedite the proceedings and did not argue before the domestic courts the length of proceedings. In the light of all the above the Government conclude that the applicant has not exhausted domestic remedies or, alternatively, that the application is manifestly ill-founded.

The applicant refutes the Government's observations and submits that the length of proceedings cannot be regarded as "reasonable" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission considers that the Government's observation that the applicant at no time requested the proceedings to be speeded up, does not relate to the problem of the exhaustion of domestic remedies but to that of the substance of the application. In other words, it can only be taken into consideration by the Commission for the purpose of assessing the applicant's conduct in order to decide the merits of the application, i.e. whether the length of proceedings exceeded a reasonable time (No. 8961/80, dec. 8.12.81, D.R. 26 p. 200; No. 8990/80, dec. 6.7.82, D.R. 29 p. 129).

It follows that the Government's preliminary objection concerning non-exhaustion of domestic remedies must be rejected.

Furthermore, the Commission considers, in the light of the criteria established by the case-law of the Convention organs on the question of the reasonableness of the length of proceedings, namely the complexity of the case, the applicant's conduct and that of the competent authorities, and having regard to all the information in its possession, that a thorough examination of this complaint is required both as to the law and as to the facts. The application cannot, therefore, be regarded as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention, and no other ground for declaring it inadmissible has been established.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION ADMISSIBLE,
without prejudging the merits of the case.

Secretary to the First Chamber	Acting President of the First Chamber
(M.F. BUQUICCHIO)	(J. LIDDY)