AS TO THE ADMISSIBILITY OF

Application No. 27418/95
by Antonios GERAKOPOULOS
against Greece

The European Commission of Human Rights (First Chamber) sitting in private on 26 February 1997, the following members being present:

Mrs. J. LIDDY, President
MM. E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

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 February 1995 by Antonios GERAKOPOULOS against Greece and registered on 29 May 1995 under file No. 27418/95;

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 1 April 1996 and the observations in reply submitted by the applicant on 29 November 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Greek citizen, born in 1921. He is a mineralogist and resides in Athens.

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

On 7 September 1954 the applicant became the co-owner of a mine in Evros (Greece).

On 7 July 1983, by decision No. 10/14/3/11048, the Minister of Industry declared that the applicant and the co-owner company had lost their rights on the mine on the ground that they had not fulfilled their obligation under the Mining Code to undertake between 1978 and 1980 works at the mine of a value not less than 10.530.000 drachmas (this amount was calculated on the basis of the surface of the mine

multiplied by 1.000.000 drachmas per year). The same decision stated that the mine owners could appeal to the Administrative Court of Mines (Dioikitiko Dikastirio Metqllion) within 30 days from its service. The decision was served on the applicant on 12 August 1983.

Actions undertaken by the applicant

On 19 September 1983 the applicant lodged before the Administrative Court of Mines an administrative appeal against decision No. 10/14/3/11048, which was dismissed on 4 April 1984 on the ground that it was out of time (decision No. 35/1984).

On 15 February 1985 the applicant lodged an appeal in cassation (anairesi) against this decision.

On 21 October 1987, by decision No. 4374/1987, the Council of State (Simvoulio tis Epikrateias) dismissed the applicant's appeal in cassation as being ill-founded.

Actions undertaken by the co-owner company

On 27 July 1983 the co-owner company lodged an administrative appeal against decision No. 10/14/3/11048 before the Administrative Court of Mines.

On 8 May 1985 the applicant applied to join the proceedings as an intervening third-party. The hearing took place on 3 July 1985.

On 4 December 1985, by judgment No. 37/1985, the Administrative Court of Mines dismissed the applicant's intervention. It also rejected the co-owner company's appeal on the ground that the mine at issue had not been sufficiently exploited.

On 22 April 1986 the applicant, acting in his name and also on behalf of the co-owner company, lodged an appeal in cassation against this judgment.

On 21 October 1987, by decision No. 4375/1987, the Council of State quashed the decision at issue on the ground that the intervention of the applicant should have been allowed and referred the case to the First Instance Administrative Court (Dioikitiko Protodikeio) of Athens which had in the meantime taken over the competence of the Administrative Court of Mines (Law No. 1406/1983).

On 29 September 1988, by decision No. 15035/1988, the First Instance Administrative Court of Athens rejected the appeal lodged on 27 July 1983 as being ill-founded. The applicant's intervention was in consequence also rejected.

On 25 July and 7 August 1989 the co-owner company and the applicant respectively appealed to the Athens Administrative Court of Appeal (Dioikitiko Efeteio).

On 19 April and 6 August 1991 the applicant filed additional reasons for appeal.

The hearing was fixed for 7 February 1991 and then adjourned to 23 May 1991 at the request of the appellants. On 23 May 1991 the hearing was again adjourned because the members of the Athens Bar were on strike.

The case was heard on 19 September 1991.

On 16 January 1992, by decision No. 103/1992, the appeals were dismissed. The Court held that the contested decision was not subject to an ordinary appeal but only to an appeal in cassation.

On 21 May 1992 the applicant and the co-owner company lodged with the Council of State an appeal in cassation against this judgment arguing that, in declaring itself incompetent to examine their appeal, the Athens Administrative Court of Appeal had violated the law.

On 12 March 1993 the applicant and the co-owner company filed additional reasons for cassation.

The case was heard on 17 November 1993.

On 7 September 1994, by decision No. 2389/1994, the Council of State upheld the contested decision and rejected the appeal in cassation.

Relevant domestic law

A. According to the Mining Code, the minerals belong to public ownership and are assigned by the State to any person, in accordance with the provisions of the law. The main obligation of a mine owner is the exploitation of the mine (Articles 102 and s.). When the competent public service establishes that no exploitation or mining research has been carried out in a mine in accordance with the provisions of the law, it forwards the pertinent particulars to the Mines Board which, after hearing the concerned parties, decides on the forfeiture of the right of mine ownership (Article 121).

B. By virtue of Law No. 1406/1983 all administrative disputes (dioikitikes diafores ousias,) except for actions for annulment (akirotikes diafores), come within the competence of the lower administrative courts (Taktika Dioikitika Dikastiria), which replaced all special administrative courts (Eidika Dioikitika Dikastiria). According to Article 10 of this law, as interpreted by the constant case-law, no appeal lies against a decision issued by a lower administrative court in a case which had been heard by a special administrative court in first instance and by the Council of State on appeal, and which is then remanded to the lower administrative court.

COMPLAINTS

1. The applicant complains that the forfeiture of his rights on the mine in Evros amounts to a violation of the rights secured to him under Articles 8 para. 1 of the Convention and 1 of Protocol No. 1.

2. The applicant further complains under Article 6 para. 1 of the Convention of the length of the proceedings.

3. The applicant complains under Articles 6 para. 1, 13, 14 and 18 of the Convention that the Greek courts did not correctly apply the domestic law in his case and that his right to a fair hearing by impartial courts has been violated. In particular, the applicant alleges that the Greek courts did not carefully consider his case and applied their case-law in a way that was not favourable to him, which proved that they were biased against him.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 24 February 1995 and registered on 29 May 1995.

On 29 November 1995 the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 1 April 1996 after an extension of the time-limit fixed for that purpose. The applicant replied on 29 November 1996, also after an

extension of the time-limit.

THE LAW

1. The applicant complains that the forfeiture of his rights on the mine in Evros amounts to a violation of the rights secured to him under Articles 8 para. 1 (Art. 8-1) of the Convention and 1 of Protocol No. 1 (P1-1).

The Commission will examine this complaint under Article 1 of Protocol No. 1 (P1-1) which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The respondent Government argue on three separate grounds, namely failure to comply with the six months rule and incompetence of the Commission ratione personae and temporis, that the application is inadmissible:

The Government first argue that the application is out of time under Article 26 (Art. 26) of the Convention, which requires complaints to be submitted to the Commission within six months from the date on which the final decision was taken. They submit that the proceedings undertaken by the applicant ended on 21 October 1987 when the Council of State dismissed his appeal in cassation. The applicant, however, did not introduce his application to the Commission until 24 February 1995, i.e. more than seven years after the end of the proceedings.

As regards the proceedings which ended on 7 September 1994, the Government submit that the applicant cannot be considered a "victim" within the meaning of Article 25 (Art. 25) of the Convention, given the fact that these proceedings were undertaken by the co-owner company and their results, whatever they were, would have consequences only for that company. The fact that the applicant participated in the proceedings as an intervening third-party is of no importance for the requirements of Article 25 (Art. 25), since the outcome of the proceedings could not have affected the final loss of the applicant's own property rights, a matter which has been settled since 1987.

The Government also point out that under the terms of the declaration made by Greece recognising the right of individual petition, the Commission is not competent ratione temporis to examine applications relating to events which took place before 20 November 1985. Therefore, all complaints of the applicant referring to actions which took place before this date should be dismissed as inadmissible.

Alternatively, the Government submit that the application is manifestly ill-founded.

The applicant rejects the arguments of the respondent Government.

The Commission notes that under Article 26 (Art. 26) of the Convention it may only deal with a matter "within a period of six months from the date on which the final decision was taken".

In the present case the Commission notes that the proceedings

undertaken by the applicant ended on 21 October 1987, which is considerably more than six months before the date on which he submitted his application before the Commission.

It follows that this part of the application must be rejected in accordance with Article 27 para. 3 (Art. 27-3) of the Convention and that the Commission may only deal with the proceedings undertaken by the co-owner company and in which the applicant participated as an intervening third-party.

As regards the Government's objection that the applicant cannot claim to be a victim of the Convention concerning the outcome of the proceedings undertaken by the co-owner company, the Commission notes that on 8 May 1985 the applicant applied to join these proceedings as an intervening third-party. Both he and the co-owner company contested decision No. 10/14/3/11048 by virtue of which they had lost their property rights on the same mine. If this decision had been overturned, the applicant's property rights would also have been affected.

In the light of the above, and given also the fact that the Council of State allowed the applicant's intervention (decision No. 4375/1987), the Commission cannot accept the Government's argument, according to which the outcome of the proceedings could not affect the applicant's rights, and therefore considers that the applicant can claim to be a "victim" within the meaning of Article 25 (Art. 25) of the Convention.

As regards the merits of the case, the Commission notes that under Greek law property rights on mines can be assigned by the State to any person provided, inter alia, that productive researches are carried out in the mine. Otherwise, the law provides that the owner loses his rights on the mine.

Accordingly, the Commission notes that in the present case the applicant had only a conditional right to property which he lost because he had not fulfilled his obligations under Greek law. Therefore, the Commission considers that the applicant was deprived of his possessions in the public interest and according to the conditions provided for by law.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains of the length of the proceedings and invokes Article 6 para. 1 (Art. 6-1) of the Convention which, insofar as relevant, provides as follows:

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

In the present case the proceedings started on 8 May 1985 when the applicant applied to join the proceedings as an intervening third-party and ended on 7 September 1994. They therefore lasted nine years and four months.

The Commission recalls that the period to be considered begins on 20 November 1985, when the recognition by Greece of the right of individual petition took effect; however, in assessing the reasonableness of the time that elapsed after 20 November 1985, account must be taken of the then state of proceedings (see Eur. Court HR, Foti and others v. Italy judgment of 10 December 1982, Series A no. 56, p. 18, para. 53). Therefore, the period to which the Commission's examination relates is eight years, nine months and eighteen days.

The Commission recalls that the reasonableness of the length of

proceedings must be assessed according to the circumstances of the case and with reference to the following criteria: the complexity of the case and the conduct of the applicant and of the authorities dealing with the case (Eur. Court HR, Vernillo v. Italy judgment of 20 February 1991, Series A no. 198, p. 12, para. 30).

The Commission notes that the case concerned property rights on a mine and necessitated a careful study by the competent authorities of whether the mine at issue had been exploited according to the applicable legal criteria. Therefore the Commission considers that the case had a certain complexity.

As regards the conduct of the parties, the Commission recalls that it should be borne in mind that in civil matters the exercise of the right to a hearing within a reasonable time is subject to diligence being shown by the party concerned (Editions Périscope v. France, Comm. Report 11.10.90, para. 44, Eur. Court HR, Series A no. 234-B, p. 72).

In the present case the Commission notes that on three occasions the applicant took several months to take the relevant procedural steps: from 4 December 1985 to 22 April 1986 (more than four months); from 29 September 1988 to 7 August 1989 (more than ten months); from 16 January 1992 to 21 May 1992 (more than four months). The Commission also notes that the hearing before the Athens Administrative Court of Appeal was adjourned at the request of the appellants, and this adjournment caused a delay of more than seven months. It therefore appears that the applicant contributed substantially to the length of the proceedings.

The Commission recalls that only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (Eur. Court HR, H. v. France judgment of 24 October 1989, Series A no. 162, pp. 21-22, para. 55). In the present case the Commission has found basically two delays which could be attributed to the Council of State, namely an eighteen months period from 22 April 1986 to 21 October 1987, and a period of almost ten months from 17 November 1993 to 7 September 1994. As for the rest, the chronology of the proceedings shows that the judicial authorities have shown due diligence in the conduct of the proceedings.

Having regard to all the circumstances of the case and in particular to the fact that within the period complained of the case was heard by four different courts plus the Administrative Court of Mines, the Commission concludes that, although some of the delays could probably have been avoided, they are not sufficiently serious to warrant the conclusion that the total duration of the proceedings is excessive.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains under Articles 6 para. 1, 13, 14 and 18 (Art. 6-1, 13, 14, 18) of the Convention that the Greek courts did not correctly apply the domestic law in his case and that his right to a fair hearing by impartial courts has been violated. In particular, the applicant alleges that the Greek courts did not carefully consider his case and applied their case-law in a way that was not favourable to him, which proved that they were biased against him.

The Commission recalls that under Article 19 (Art. 19) of the Convention its sole task is to ensure observance of the engagements undertaken by the High Contracting Parties in the Convention. It is not competent to examine applications concerning errors of law or fact allegedly committed by the competent national authorities, to whom it falls, in the first place, to interpret and apply domestic law. The Commission is not competent to look into allegations concerning such

errors except where, and to the extent that, they seem likely to have entailed a violation of the rights and freedoms guaranteed by the Convention (No. 19890/92, Dec. 3.5.93, D.R. 74, p. 234).

In the light of all the material in its possession and, in so far as the matters complained of are within its competence, the Commission finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission,

- by a majority,

DECLARES INADMISSIBLE the applicant's complaint concerning the length of the proceedings;

- unanimously,

DECLARES INADMISSIBLE the remainder of the application.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber