AS TO THE ADMISSIBILITY OF

Application No. 30478/96
by Stavros GREGORIADES
against Greece

The European Commission of Human Rights (First Chamber) sitting in private on 17 October 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
A. WEITZEL
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ

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 22 January 1996 by Stavros GREGORIADES against Greece and registered on 18 March 1996 under file No. 30478/96;

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 Greek citizen born in 1936 in Cyprus where he is currently residing. He is a doctor.

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

I. PROCEEDINGS INSTITUTED FURTHER TO CRIMINAL COMPLAINTS LODGED BY THE APPLICANT

On 6 December 1993 the indictments chamber of the First Instance Criminal Court (simvulio plimmeliodikon) of Athens decided not to commit for trial ten members of the administration of a public hospital and two police officers against whom criminal proceedings had been instituted further to a complaint lodged by the applicant accusing them of crimes committed in the exercise of their duties. The applicant appealed.

On 8 February 1994 the indictments chamber of the First Instance Criminal Court of Athens decided not to commit for trial two employees of the Ministry of Health against whom criminal proceedings had been instituted further to a complaint lodged by the applicant accusing them of breach of duty. The applicant appealed.

Both the applicant's appeals were rejected by the indictments

chamber of the Court of Appeal (simvulio efeton) of Athens as inadmissible for lack of locus standi on 17 March 1994 and 23 March 1994 respectively.

On 27 May 1994 the applicant lodged an application with the Commission complaining, inter alia, under Articles 6 and 13 of the Convention that he had not been given the chance to appear in person before the indictments chambers which had dismissed the proceedings which had been instituted further to his complaints. The application was registered on 25 November 1994 under file No. 25784/94 and was rejected by the Commission, sitting as a Committee by virtue of Article 20 para. 3 of the Convention, on 6 April 1995.

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

a. Particular circumstances of the case

On 5 September 1994 the public prosecutor of the First Instance Criminal Court (isangeleas plimmeliodikon) of Athens committed the applicant for trial before the three-member First Instance Criminal Court (trimeles plimmeliodikio) of Athens for a series of offences, including perjury, which the applicant had allegedly committed in his attempt to have criminal proceedings instituted against various persons. A hearing was fixed for 14 April 1995. The summons were served on 13 October 1994 at the address the applicant had indicated to the authorities at the beginning of the proceedings.

On 20 October 1994 the applicant appealed to the public prosecutor of the Court of Appeal (isangeleas efeton) of Athens against the decision committing him for trial, informed the authorities that his address had been changed and named a lawyer, Mr. D, as the person who should receive all documents on his behalf (antiklitos).

On 26 October 1994 the applicant claims to have left Greece for Cyprus.

On 14 November 1994 the public prosecutor of the Court of Appeal allowed the applicant's appeal and sent the case to the indictments chamber of the First Instance Criminal Court of Athens. On 15 December 1994 the indictments chamber decided to commit the applicant for trial.

On 17 February 1995 the applicant appealed to the indictments chamber of the Court of Appeal of Athens. His appeal was rejected as inadmissible on 10 May 1995. The decision was served at the applicant's old address and was forwarded to the applicant in Cyprus by his ex-landlord.

On 25 July 1995 the applicant notified the public prosecutor of the First Instance Criminal Court of Athens that he had moved to Cyprus and informed him of his new address.

On 27 July 1995 the three-member First Instance Criminal Court of Athens convicted the applicant in absentia and sentenced him to a suspended sentence of seven months imprisonment.

The applicant claims not to have been informed of the decision of the first instance court before 9 January 1996 when he received a letter from a lawyer, Mrs. V, he had entrusted with inquiring about the state of the criminal proceedings against him.

b. Relevant domestic law and practice

According to Article 273 para. 1 (c) of the Code of Criminal Procedure, all documents related to a criminal trial must be served at the address which the accused indicated when first appearing before the investigating judge or the public prosecutor, unless the accused has

made a valid declaration of change of address, inter alia, when appealing against the public prosecutor's decision committing him for trial. According to Article 273 para. 1 (e) of the Code of Criminal Procedure, if the accused declares that he lives abroad and is not represented by counsel, he is obliged to name one of the lawyers of the competent first instance criminal court as the person who will receive all documents on his behalf (antiklitos). All documents must be served on this lawyer and only on him.

According to Article 473 para. 1 of the Code of Criminal Procedure, the time allowed for appeal begins to run, for persons convicted in absentia, from the date of valid service of the judgment convicting them. According to the case-law of the Court of Cassation, an invalid service cannot affect the rights of the prospective appellant (decisions Nos. 490/1967, 141/1969 and 485/1995).

COMPLAINTS

1. The applicant complains under Article 6 para. 1 of the Convention that the indictments chamber of the First Instance Criminal Court of Athens did not hear him before deciding not to commit for trial the various persons against whom he had lodged criminal complaints.

2. The applicant also complains under Article 6 para. 1 of the Convention that he was committed for trial and found guilty by the three-member First Instance Criminal Court of Athens without having been heard. He claims that, although he had informed the competent authorities of his change of address and his moving to Cyprus, the judgment convicting him was never served on him. When he was informed of his conviction, he could no longer appeal because the time-limit had expired.

THE LAW

1. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that the indictments chamber of the First Instance Criminal Court of Athens did not hear him before deciding on 6 December 1993 and 8 February 1994 not to commit for trial the various persons against whom he had lodged criminal complaints.

The Commission recalls that under Article 27 para. 1 (b) (Art. 27-1-b) of the Convention it should not deal with any application submitted under Article 25 (Art. 25) which is substantially the same as a matter which it has already examined and if it contains no new information. The Commission considers that the applicant's complaints are essentially the same as complaints he had raised in Application No. 259874 which was declared inadmissible on 6 April 1995 and that they contain no relevant new information. It follows that this part of the application must be rejected pursuant to Article 27 para. 1 (b) (Art. 27-1-b) of the Convention.

2. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that he was committed for trial and found guilty by the three-member First Instance Criminal Court of Athens without having been heard.

The Commission recalls that a person who has been convicted in absentia is entitled under Article 6 para. 1 (Art. 6-1) of the Convention to a fresh determination of the merits of the charge by a court, unless he has unequivocally waived his right to take part in the trial (Eur. Court H.R., Colozza v. Italy judgment of 12 February 1985, Series A no. 89, p. 14, para. 27, and pp. 15-16, paras. 29-30). According to Greek law, a person convicted in absentia may obtain a fresh determination of the merits of the charge by appealing against his conviction. The appeal must be lodged within ten days from the date of service of the judgment.

The Commission notes that the applicant claims that he has missed the deadline, the judgment having been apparently served at an address other than the address he had given to the competent authorities. However, the applicant also claims that he had duly informed the authorities of his change of address and his moving to Cyprus and the Commission notes that, according to the case-law of the Court of Cassation, an invalid service does not affect the rights of the prospective appellant.

The Commission recalls that in the case of Stamoulakatos v. Greece it expressed certain doubts about the effectiveness of the particular remedy on the basis that the accused bore the burden of proving that the service was invalid (Comm. Report 20.5.92, para. 68, Eur. Court H.R., Series A no. 271, p. 19). However, in that case the applicant had lodged an appeal against his conviction in absentia and his appeal had been rejected. The applicant in the present case, on the contrary, never attempted to challenge the decision of the first instance court, although he has produced before the Commission several elements of proof that the competent authorities had been notified of his change of address. In these circumstances, the Commission cannot conclude that the applicant was precluded from obtaining a fresh determination of the merits of the charges against him by appealing against his first instance conviction when he was informed of the relevant judgment.

It follows that no appearance of a violation of Article 6 para. 1 (Art. 6-1) of the Convention is disclosed and that this part of the application must be rejected as inadmissible being 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.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber