AS TO THE ADMISSIBILITY OF

Application No. 18997/91
by I. Z.
against Greece

The European Commission of Human Rights sitting in private on 28 February 1994, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
A. WEITZEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 20 June 1991 by I.Z. against Greece and registered on 25 October 1991 under file No. 18997/91;

Having regard to :

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

- the observations submitted by the respondent Government on 5 July 1993 and the observations in reply submitted by the applicant on 23 September 1993;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, is a Greek citizen born in 1951. He is a labourer residing in Chalkida.

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

The applicant participated in the legislative elections on 8 April 1990 and in the communal elections for the town of Chalkida on 21 October 1990. This town is situated in the constituency of Euboea.

As regards the first election, around 24,000 people voted in Chalkida. The total number of people who voted in the constituency of Euboea was 149,229. The quota necessary for election as a candidate in the constituency was 21,006 votes. Three independent candidates secured 9 of the votes in the constituency, but none of these were cast in Chalkida because the candidates had failed to provide the prefecture of Euboea with pre-printed ballot papers for distribution in the town.

Subsequently, the applicant challenged the validity of the above legislative election before the Special Supreme Court (Anotato Idiko Dikastirio). The applicant complained of the lack of ballot-papers for three independent candidates in the town of Chalkida. He argued that, according to the law on legislative elections, since there were no pre-printed ballot-papers available, voters should have been provided with blank ballot-paper with the seal of the election committees on it, a rule that was not observed.

In its judgment of 16 January 1991 the Court held that, according to the provisions regulating its competence (Act No. 345/1976), in order to annul the election in a constituency, it had first to ascertain an irregularity capable of rendering the election result doubtful in that constituency. However, the facts invoked by the applicant, namely that the total number of voters in the town of Chalkida was 24,000 and the quota required for the election of any one candidate in the whole of the constituency of Euboea was 21,006 votes, were not such as to give rise to doubts that the result of the election would have been the same, had the alleged irregularity not taken place. Accordingly, the Special Supreme Court dismissed the applicant's complaint without deciding whether any irregularity had actually occurred.

The applicant further challenged the validity of the communal election of 21 October 1990 because again official blank ballot-papers had not been at the disposal of the voters. His complaint was declared inadmissible by the Council of State (Symvoulio tis Epikrateias) on the ground that the applicant had failed to pay the necessary litigation fees. The judgment of the Council of State was given on 30 April 1991.

COMPLAINTS

The applicant complains that the conditions under which the legislative election of 8 April 1990 took place in the town of Chalkida did not ensure the free expression of the opinion of the people in the choice of the legislature within the meaning of Article 3 of Protocol No. 1 to the Convention. In particular, he complains that the electoral committees did not provide voters with official blank ballot-paper to be used in the absence of pre-printed ballot-papers for three independent candidates.

The applicant further complains that the proceedings concerning his challenge of the validity of both the legislative and communal elections were not fair, contrary to Article 6 para. 1 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 June 1991 and registered on 25 October 1991.

On 3 May 1993 the Commission decided to communicate the case to the respondent Government and invite them to submit written observations on the admissibility and merits of the application.

The Government's observations were submitted on 5 July 1993 and the

applicant submitted his observations in reply on 23 September 1993.

THE LAW

1. The applicant complains that, in view of the omission of the electoral committees to provide voters with official blank ballot-paper in the absence of pre-printed ballot-papers for three independent candidates, the legislative election of 8 April 1990 in the town of Chalkida was held under conditions which contravened Article 3 of Protocol No. 1 (P1-3) to the Convention. This provision reads as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

a) The Government first submit that the applicant's complaint is of a general nature and should be regarded as an actio popularis, not permitted by the Convention. They note in this respect that the applicant does not complain that he himself was not given any ballot-papers for the three independent candidates or, as a substitute, official blank ballot-paper. Neither does the applicant specify that, had he been given such paper, he would have voted for one or other of those candidates. The Government also observe that the applicant does not claim to have suffered concrete prejudice as a result of the alleged irregularity. They submit accordingly that the applicant cannot claim to be a "victim" of a violation of Article 3 of Protocol No. 1 (P1-3) within the meaning of Article 25 (Art. 25) of the Convention.

The Commission recalls that the word "victim" in Article 25 (Art. 25) refers to the person directly affected by the act or omission at issue, the existence of a violation being conceivable even in the absence of prejudice (cf. inter alia Eur. Court H.R., Marckx judgment of 13 June 1979, Series A no. 31, p. 13, para. 27; Lüdi judgment of 15 June 1992, Series A no. 238, p. 16, para. 34).

The Commission notes that the applicant's name appears on the electoral register of the town of Chalkida where he actually exercised his right to vote in the legislative election of 8 April 1990. It further notes that the irregularity complained of occurred during that election in the town of Chalkida. The Commission is therefore satisfied that the applicant was directly and personally affected by the alleged irregularity in the exercise of his right to vote. He may accordingly claim to be a "victim" of a violation of Article 3 of Protocol No. 1 (P1-3) within the meaning of Article 25 (Art. 25) of the Convention.

b) As regards the merits of the complaint, the Government argue that Article 3 of Protocol No. 1 (P1-3) has not been violated in the instant case. In this respect, they submit that no irregularity has actually taken place under Greek law. Indeed they infer from Article 67 of the electoral law that the obligation of the electoral committees to provide voters with official blank ballot-paper arises only when the pre-printed papers run out "during the ballot". In the present case, however, the absence of such papers was due to the candidates' own omission to supply the prefecture of Euboea with printed ballot-papers in time for distribution in the town of Chalkida, as required by Article 64 of the electoral law. Accordingly, no irregularity occurred "during the ballot".

The Government also submit that, given the total number of voters in the town of Chalkida, the electoral quota required to ensure a candidate's election in the constituency of Euboea, and the fact that the three candidates at issue only secured 9 votes in the whole constituency, the finding of the Special Supreme Court that the irregularity complained of could not have affected the election result, is in conformity with the requirements of Article 3 of Protocol No. 1 (P1-3).

The applicant claims that the obligation on the electoral committee

to give the voters official blank ballot-paper arises regardless of whether the lack of printed ballot-papers for some candidates occurred during the ballot or existed from its very beginning, as in the instant case. Moreover, the fact that the three independent candidates at issue secured only 9 votes in the whole of the constituency of Euboea does not exclude, in the applicant's view, the possibility that more than 21,006 voters in the town of Chalkida would have voted for one of them if they had been given blank ballot-paper.

The Commission is not required to decide whether an irregularity has actually taken place under Greek law. Its task is rather to establish whether an interference with the free expression of the opinion of the people in the choice of the legislature has occurred in violation of Article 3 of Protocol No. 1 (P1-3) to the Convention.

In view of the finding of the Special Supreme Court, the competent national authority on the subject, that the irregularity complained of could not have prejudiced the outcome of the legislative election, the Commission's review must be confined to whether or not such a finding was arbitrary.

In this respect, the Commission takes particular account of the fact that the three independent candidates failed to supply the prefecture of Euboea with printed ballot-papers for distribution in the town of Chalkida. Moreover, it notes that these candidates secured only 9 out the 149,229 votes cast in the whole Euboea constituency.

In view of the above, the applicant's allegation that the three independent candidates could have secured the electoral quota of 21.006 votes in the constituency appears to be based on a mere theoretical possibility. It follows that the Special Supreme Court's finding cannot be considered arbitrary. Accordingly, in the absence of any genuine prejudice to the outcome of the legislative election on 8 April 1990, the Commission finds that the situation complained of does not amount to an interference with the free expression of the opinion of the people in the choice of the legislature envisaged by Article 3 of Protocol No. 1 (P1-3) to the Convention.

It follows that this part of the application is wholly unsubstantiated and must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains of alleged unfairness in the proceedings whereby he challenged the validity of the legislative and communal elections. He invokes in this respect Article 6 (Art. 6) of the Convention.

The Commission recalls that Article 6 para. 1 (Art. 6-1) of the Convention guarantees to everyone the right to a fair hearing in the determination of, inter alia, his civil rights and obligations. However, litigation concerning the validity of legislative or communal elections involves the determination of political rights which do not fall within the notion of civil rights and obligations as referred to in Article 6 para. 1 (Art. 6-1) (No. 11068/84, Priorello v. Italy, Dec. 6.5.85, D.R. 43 p. 195).

It follows that Article 6 (Art. 6) of the Convention does not apply to the proceedings of which the applicant complains and that this part of the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission President of the Commission

(H.C. KRÜGER) (C.A. NØRGAARD)