CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 43619/98
by Evangelos KALLITSIS
against Greece

The European Court of Human Rights (Second Section) sitting on 7 October 1999 as a Chamber composed of

Mr M. Fischbach, *President*,
Mr C. Rozakis,
Mr G. Bonello,
Mrs V. Strážnická,
Mr P. Lorenzen,
Mr A.B. Baka,
Mr E. Levits, *Judges*,

with Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 11 May 1998 by Evangelos Kallitsis against Greece and registered on 28 September 1998 under file no. 43619/98;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 26 May 1999 and the observations in reply submitted by the applicant on 9 July 1999;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Greek citizen born in 1921. He is an honorary vice-president of the State Audit Council (Ελεγκτικό Συνέδριο) and resides in Athens.

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

On 1 July 1984 the post of vice-president of the State Audit Court was declared vacant. At that time the applicant was the senior judge. The post remained vacant for three years and was filled by the applicant on 30 July 1987.

On 28 November 1988 the applicant brought an action for pecuniary and non-pecuniary damages against the State before the First Instance Administrative Court of Athens. In particular, the applicant claimed that he should have been promoted soon after the post was declared vacant and that the delay of the Administration to promote him to the post of vice-president of the State Audit Court caused him pecuniary damage and raised suspicions as to his abilities.

On 6 October 1989 the Court granted the applicant's claim insofar as it concerned non-pecuniary damage. The Court dismissed the remainder of the applicant's action on the ground that he had no enforceable claim to the vacant post.

On 24 November and 29 December 1989 respectively the applicant and the State appealed against this decision.

On 17 May 1990 the Athens Administrative Court of Appeal rejected the applicant's appeal and annulled the decision of the First Instance Administrative Court. The Court of Appeal referred in particular to the discretionary powers by which the competent administrative authorities organised their activity.

On 15 July 1990 the applicant appealed to the Council of State.

On 23 January 1995 the First Chamber of the Council of State composed of five judges decided to refer the case to a Chamber composed of seven judges.

On 27 November 1995 the First Chamber of the Council of State composed of seven judges decided to refer the case to the Plenary because of the important issues it raised.

On 17 October 1997 the Council of State sitting in Plenary rejected the applicant's appeal. In particular the Council of State held that it was beyond the competence of the Court of Appeal to decide whether the decision to promote the applicant should be backdated. Therefore the Court of Appeal was right in rejecting the applicant's appeal. The applicant obtained a copy of that decision in January 1998.

COMPLAINTS

1. Invoking Article 6 § 1 of the Convention, the applicant complains about the unfairness of the proceedings before the Greek courts.

2. The applicant further complains under Article 6 § 1 of the Convention about the length of the proceedings before the Greek courts.

PROCEDURE

The application was introduced before the European Commission of Human Rights on 11 May 1998 and registered on 28 September 1998.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

On 26 January 1999 the Court decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 26 May 1999, after an extension of the time-limit fixed for that purpose. The applicant replied on 9 July 1999.

THE LAW

The applicant complains about the unfairness and the length of the proceedings before the Greek courts.

Article 6 § 1 of the Convention, insofar as relevant, provides as follows:

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

The Government first argue that the application is inadmissible for failure to comply with the six-month time-limit. The Government allege that the applicant lodged his application with the Commission on 5 November 1998, which is more than six months after the date on which the final domestic decision which taken.

The Government also argue that the applicant had never invoked before the national courts any of the complaints invoked before the Court. Therefore his application should be declared inadmissible for non-exhaustion of domestic remedies.

The Government further submit that Article 6 § 1 of the Convention is inapplicable to the proceedings in issue, which concerned the public service. They argue that even if an economic interest is involved, the aspects of public law prevail in this case. They submit that the proceedings do not therefore concern a dispute as to a "civil" right within the meaning of Article 6.

Alternatively, the Government submit that the proceedings in issue satisfied the requirements of Article 6.

The applicant contests the arguments of the respondent Government.

The Court has already ruled that where, as in the present case, the domestic law does not provide for service, it is appropriate to take the date the decision was finalised as the starting-point, that being when the parties were definitely able to find out its content (see the Papachelas v. Greece judgment of 25 March 1999, to be published in *Reports of Judgments and Decisions* 1999, § 30). The Council of State's judgment was taken on 17 October 1997, finalised on a later date and the applicant obtained a copy in January 1998. He introduced his application less than six months later, on 11 May 1998. Consequently, the Government's preliminary objection must be dismissed.

The Court must then determine whether Article 6 is applicable to the proceedings at issue. According to the principles enunciated in its case-law, the Court has to ascertain whether there was a dispute over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question (see, among others, the Neigel v. France judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 409, § 38).

In the present case the Court considers that, although the dispute did have an economic aspect, that aspect cannot be decisive for the purpose of determining whether Article 6 is applicable. The applicant was essentially challenging the State Audit Court's delay in promoting him to the post of vice-president. However, the Court considers that the applicant had no arguable grounds for claiming a right to be promoted immediately to the vacant post in question.

In the light of all the above, the Court concludes that the applicant's complaints do not involve a civil right within the meaning of Article 6 § 1 of the Convention. It follows that the application is incompatible *ratione materiae* with the provisions of the Convention and must be dismissed in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Erik Fribergh
Registrar

Marc Fischbach
President