AS TO THE ADMISSIBILITY OF

Application No. 40429/98
by Michalis KARCHIMAKIS
against Greece

The European Commission of Human Rights (First Chamber) sitting in private on 10 September 1998, the following members being present:

MM M.P. PELLONPÄÄ, President
N. BRATZA
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
Mrs J. LIDDY
MM L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIČ
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 12 January 1998 by Michalis Karchimakis against Greece and registered on 25 March 1998 under file No. 40429/98;

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 1957. He is a political scientist and resides in Athens.

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

Between 9 November 1993 and 8 October 1994 the applicant was a special adviser in the Prime Minister's office. On 22 September 1996 he was elected Member of Parliament for the Lasithi district.

On 11 October 1996 a failed candidate from the same district challenged the applicant's election before the Special Supreme Court (Anotato Idiko Dikastirio) which, according to domestic law, had to be composed of the Presidents of the highest judicial bodies, i.e. the Council of State (Simvulio Epikratias), the Court of Cassation (Arios Pagos) and the Court of Auditors (Elengtiko Sinedrio), as well as four members of the Council of State and four members of the Court of Cassation. According to the law, if any of the Presidents of the three highest judicial bodies could not participate, he or she had to be replaced by the most senior Vice-President of the corresponding body available.

The hearing in the applicant's case was held on 18 June 1997. The sixth most senior Vice-President of the Court of Cassation replaced the President of that court. Judgment was reserved.

On 24 August 1997 a daily newspaper published the information that, although the fourth most senior Vice-President of the Court of Cassation was available on 18 June 1997, he had not been called to sit on the Special Supreme Court instead of the Court of Cassation's President who could not participate. On 29 August 1997 and 15 September 1997 the applicant raised the issue with the President of the Special Supreme Court.

On 24 September 1997 the Special Supreme Court considered that the applicant could not raise any objections as to the participation of a judge after the hearing. In any event, the court considered that the Vice-Presidents of the three highest judicial bodies had to be present at all the hearings before it. Since the fourth most senior Vice-President of the Court of Cassation was not present at the hearing of 18 June 1997 it had to be assumed that he could not participate and had to be replaced by the sixth most senior Vice-President of that body who was present. As regards the merits of the case, the court considered that a special advisor in the Prime-Minister's office was a salaried civil servant within the meaning of Article 56 para. 3 of the Constitution. As a result and according to this provision, a person who had held this post for more than three months during the three years preceding a parliamentary election, like the applicant had, could not be elected Member of Parliament. Therefore, the applicant's election to Parliament had to be annulled.

COMPLAINTS

1. The applicant complains under Article 6 para. 1 of the Convention that his case was not tried by an impartial tribunal established by law.

2. He also complains under Article 3 of Protocol No. 1 about the annulment of his election.

3. In a letter submitted on 10 June 1998 the applicant also complained of a violation of Article 13 taken in conjunction with Article 6 para. 1 of the Convention in that he did not have a remedy in respect of the illegal composition of the Special Supreme Court.

THE LAW

1. The applicant complains under Article 6 para. 1 of the Convention that his case was not tried by an impartial tribunal established by law.

Article 6 para. 1 of the Convention provides as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by an ... impartial tribunal established by law."

However, the Commission recalls that, according to the Convention organs' case-law, the right to stand for election to Parliament and to keep one's seat is a political one and not a "civil" one within the meaning of Article 6 para. 1 of the Convention (Eur. Court HR, Pierre-Bloch v. France judgment of 21 October 1997, Reports 1997-IV, p. 2221, para. 45). It follows that the proceedings in question did not involve a determination of civil rights and obligations within the meaning of that provision.

The Commission, therefore, considers that this part of the application in incompatible ratione materiae and must be rejected as incompatible with the provisions of the Convention in accordance with its Article 27 para. 2.

2. The applicant complains under Article 3 of Protocol No. 1 about the annulment of his election.

Article 3 of Protocol No. 1 provides 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."

The Commission recalls that, according to the Convention organs' case-law, this provision implies a subjective right to stand for election (Eur. Court HR, Gitonas and others v. Greece judgment of 1 July 1997, Reports 1997-IV, p. 1233, para. 39). However, this right is not absolute and the Court in its Gitonas and others judgment found that it was not a violation of Article 3 of Protocol No. 1 for the Special Supreme Court of

Greece to apply Article 56 para. 3 of the Constitution in order to disqualify from election to Parliament a person who had been deputy head of the Prime-Minister's Office for more than three months during the three years preceding the election (op. cit., p. 1233, para. 39, and p. 1236, para. 44). The Commission considers that the applicant's case is not different in any significant respect.

It follows that no appearance of a violation of Article 3 of Protocol No. 1 is disclosed. This part of the application must be, therefore, rejected as manifestly ill-founded in accordance with Article 27 para. 2 of the Convention.

3. The applicant complains under Article 13 taken in conjunction with Article 6 para. 1 of the Convention that he did not have a remedy in respect of the illegal composition of the Special Supreme Court.

The Commission notes that the applicant raised this complaint for the first time in a letter dated 10 June 1998 while the decision of the Special Supreme Court was taken on 24 September 1997. However, the Commission does not consider it necessary to decide whether this complaint has been raised within the six-month time-limit provided for under Article 26 of the Convention.

The Commission recalls that Article 13 of the Convention relates exclusively to a remedy in respect of a violation of one of the rights and freedoms set forth in the other provisions of the Convention (No. 6753/74, Dec. 19.12.74, D.R. 2, p. 118). The Commission has found that Article 6 para. 1 of the Convention does not apply to the proceedings in question and has rejected the relevant complaint as incompatible ratione materiae.

It follows that the complaint under Article 13 of the Convention is also incompatible ratione materiae and must be rejected as incompatible with the provisions of the Convention in accordance with Article 27 para. 2 thereof.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber