AS TO THE ADMISSIBILITY

Application No. 13780/88
by Nicholas PHILIS
against Greece

The European Commission of Human Rights sitting in private on 11 October 1989, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A. WEITZEL
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
J. CAMPINOS
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. C. L. ROZAKIS
L. LOUCAIDES

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 6 April 1988 by Nicholas Philis against Greece and registered on 20 April 1988 under file No. 13780/88;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having regard to the written observations of the respondent Government of 18 May 1989 and the applicant's observations in reply of 26 June 1989;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a Greek citizen, born in 1937, and is a private consultant enginer having had a technical bureau in Athens since 1970. The applicant's two other applications concerning civil proceedings in the context of litigation between him and the public body Organismos Ergatikis Katoikias (Application No. 12750/87) and a certain A.S. (Application NO. 14003/88) are pending before the Commission. The present application refers to civil proceedings concerning litigation between the applicant and the public bodies PIKPA (Patriotiko Idryma Koinonikis Pronoias kai Antilopseos) and PNP (Paidiko Nosokomeio Pentelis).

On 30 October 1984 the State Institution PIKPA, supervised by the Ministry of Health and Social Welfare, assigned to the applicant a

design project, concerning building installations of a hospital. A similar project was assigned to the applicant on 23 February 1983 by the hospital itself, which in the meantime had become a public law institution PNP. The projects have been submitted to and later on accepted by PNP.

On 27 July 1983 PNP informed the applicant of the fee to be paid for the work he had carried out. The applicant considered that the amount of his remuneration had been arbitrarily reduced and on 14 October 1983 requested PNP to modify the decision determining the fee. Following disagreement, the applicant applied on 29 February 1984 to the competent department of the Ministry of Health and Social Welfare.

As the request remained unanswered, the applicant introduced on 1 August 1984 an action against both PNP and PIKPA before the Athens' Court of Appeal (Efeteio Athinon).

By ministerial decision of 9 August 1984 the Minister of Health and Social Welfare rejected the applicant's requests.

On 26 February 1985 the Court of Appeal invited the applicant to submit evidence that he is inscribed as a consultant engineer in the registry of public expenditure, i.e. the list from which appointments are made for public works.

After a hearing held on 3 June 1986, the Court gave, on 15 July 1986, a partial decision rejecting the applicant's action as far as PIKPA was concerned since all rights and obligations of this body had been transferred to PNP. The Court requested the parties to submit expert evidence concerning the work carried out by the applicant.

The Court held another hearing on 22 September 1987 and gave its final decision on 16 November 1987. It declared the applicant's action inadmissible, since according to the provisions of the Royal Decree 30/1956 an action for recovering design project's fees can only be introduced by the Technical Chamber of Greece (TEE), which is exclusively authorised to bring such an action in substitution for the engineer.

COMPLAINTS

1. The applicant complains that he has not been given access to a court with regard to his remuneration claims against the public law bodies PIKPA and PNP. He invokes Article 6 para. 1 and Article 13 of the Convention.

2. He moreover complains about the length of the proceedings concerning his claims and submits in particular that these proceedings began on 14 October 1983, when he applied to PNP to modify the decision determining the amount of his fee and ended by the decision of the competent Court of Appeal on 16 November 1987. Thus, the proceedings have lasted more than four years.

3. The applicant further complains of the decision of the Ministry of Health and Social Welfare. He submits that this authority is not independent and impartial and that it did not deal with his application in a public hearing.

4. Moreover, the applicant alleges that the decision of the Ministry of Health and Social Welfare affected his claims, which he considers as "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention.

5. The applicant finally alleges that the Athens Court of Appeal did not consider his complaints concerning the fairness of the

proceedings before the Ministry of Health and Social Welfare. He complains that he has not been given an effective remedy before a national authority in relation to his complaints regarding the fairness of the administrative procedure before the Ministry and invokes Article 13 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 6 April and was registered on 20 April 1988. On 14 March 1989 the Commission decided to bring the application to the notice of the respondent Government and invite them to submit written observations on the admissibility and merits of the application.

The Government submitted their observations on 18 May 1989. The applicant presented observations in reply on 26 June 1989.

THE LAW

1. The applicant complains, invoking Article 6 para. 1 (Art. 6-1) and Article 13 (Art. 13) of the Convention that the provisions of Royal Decree 30/1956 deprive him of effective access to a court with regard to his remuneration claims against the public law bodies PIKPA and PNP.

Article 6 para. 1 (Art. 6-1) of the Convention provides as follows :

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Commission recalls that Article 6 para. 1 (Art. 6-1) of the Convention secures to everyone the right of access to a court to determine any claim relating to his civil rights (cf. Eur. Court H.R., Golder judgment of 21 January 1975, Series A no. 18, p. 18, para. 36).

The Government have submitted that the Greek law secures to the applicant sufficient access to a court. They submit in particular that the applicant is entitled to lodge an "oblique action" (plagiastiki agogi) with the competent courts in case the TEE refuses to institute proceedings. He can, moreover, sue his debtors, exercising the TEE's procedural rights pursuant to Articles 730 and following of the Civil Code (Astikos Kodix), concerning voluntary agency (dioikisi allotrion). Furthermore, the applicant can, according to the provision of the Royal Decree 30/1956, bring an ancillary interpleader action (prostheti paremvasi) and join the TEE in the proceedings as co-plaintiff or co-defendant. Finally, the Government submit that the applicant can introduce an action claiming indemnity for the damages caused by an eventual refusal by the TEE to institute proceedings.

The applicant contends that neither the ancillary interpleader action he is entitled to lodge, nor the compensation action against the TEE can be considered as guaranteeing him sufficient access to the court. He moreover submits that the possibilities of bringing an "oblique action" or of taking action against his debtors as a "voluntary agent" (dioikitis allotrion) of the TEE are purely theoretical.

The Commission considers that the case raises an issue as to whether the applicant has access to a court for the determination of his civil claims against PIKPA and PNP. The questions of fact and law in this respect are of such a complex nature that their determination requires an examination of the merits. It follows that this aspect of the application cannot be considered manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. It must,

therefore, be declared admissible, no other grounds for declaring it inadmissible having been established.

2. The applicant also complains about the length of the proceedings he instituted against PIKPA and PNP and invokes Article 6 para. 1 (Art. 6-1) of the Convention.

The rule requiring a hearing "within a reasonable time" applies to all proceedings in which the court decides on civil rights and obligations. Therefore the Commission has to examine whether this provision applies to the proceedings complained of which ended with the Athens Court of Appeal's decision declaring the applicant's action inadmissible for lack of locus standi.

Furthermore, the Commission notes that the Government submit that any possible delays in these proceedings were essentially due to the conduct of the applicant and that the competent judicial authorities cannot be held responsible for them. The applicant contends that the length of the proceedings was unreasonable because the Athens Court of Appeal took the point concerning his lack of locus standi only three years after the commencement of the proceedings.

The Commission considers that this part of the application raises complex questions of fact and law which require an examination of the merits. It follows that this part of the application cannot be considered manifestly ill-founded and must, therefore, be declared admissible, no other grounds for declaring it inadmissible having been established.

3. The applicant also complains of the decision of the Ministry of Health and Social Welfare. He alleges that this body was not impartial and that its decision constitutes an interference with his case pending before the Athens Court of Appeal. He invokes Article 6 (Art. 6) of the Convention.

The Commission however considers that the decision of the Ministry of Health and Social Welfare cannot be regarded as a determination of the applicant's civil rights and obligations. The procedure before the Ministry and the decision constitute the commencement of the dispute which then had to be brought before the competent judicial authorities.

In these circumstances the Commission finds that Article 6 (Art. 6) of the Convention does not apply to the administrative procedure before the Ministry. It follows 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).

4. The applicant alleges that the decision of the Ministry of Health and Social Welfare affected his claims which he considers as "possessions". He invokes Article 1 of Protocol No. 1 (P1-1) to the Convention.

The Commission has found that a "debt" can constitute a "possession" for the creditor (No. 7742/76, Dec. 4.7.78, D.R. 14 p. 146 and No. 7775/77, Dec. 5.10.78, D.R. 15 p. 143), but the existence of such debt must have been established. In the present case the applicant's claims cannot be regarded as established and therefore they cannot constitute a "possession" within the meaning of Article 1 of Protocol No. 1 (P1-1).

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicant finally alleges that he has not been given an

effective remedy before a national authority in relation to his complaint regarding the fairness of the administative procedure before the Ministry of Health and Social Welfare. The applicant invokes Article 13 in conjunction with Article 6 para. 1 (Art. 13+6-1) of the Convention.

The Commission recalls that the complaint concerning the fairness of the administrative procedure has been found incompatible ratione materiae with the provisions of the Convention. In this respect the Commission recalls that Article 13 (Art. 13) does not guarantee any remedy when the main complaint is outside the scope of the Convention (cf. No. 8782/79, Dec. 10.7.81, D.R. 25 p. 243). It follows that this complaint under Article 13 (Art. 13) of the Convention is incompatible ratione materiae with the provisions of the Convention and must be rejected under Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission

DECLARES ADMISSIBLE, without prejudging the merits, the applicant's complaint that he did not have access to a court with regard to his civil claims and the complaint concerning the length of the proceedings before the Athens Court of Appeal

DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE

Secretary to the Commission — President of the Commission

(H. C. KRÜGER) — (C. A. NØRGAARD)