PARTIAL

AS TO THE ADMISSIBILITY OF

Application No. 14003/88
by Nicholas PHILIS
against Greece

The European Commission of Human Rights sitting in private on 5 and 9 May 1989, the following members being present:

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

Mr. J. RAYMOND, Deputy 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 24 June 1988 by Nicholas Philis against Greece and registered on 5 July 1988 under file No. 14003/88;

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

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a Greek citizen, born in 1937, and is a private consultant engineer, having had a technical bureau in Athens since 1970. The applicant's two other applications concerning civil proceedings in the context of litigation between the applicant and the public bodies Organismos Ergatikis Katoikias (Application No. 12750/87) and Paidiko Nosokomeio Pentelis (Application No. 13780/88) are pending before the Commission. The present application refers to civil proceedings concerning litigation between the applicant and A.S., as well as criminal proceedings brought against the applicant.

In November 1980 A.S. assigned to the applicant a design project concerning electromechanical installations in the town of Amfilohia.

Following disagreement on the fee to be paid, the applicant asked the Technical Chamber of Greece (TEE) on 30 June 1981 to sue A.S. for the purpose of recovering the fee for the work he had carried out. Pursuant to the provisions of the Royal Decree (Vassiliko Diatagma) 30/1956 as modified by Royal Decree 188/1966, the TEE is exclusively authorised to claim design project remuneration in substitution for the engineer. By letters of 20 January 1982, 30 March 1983 and 13 January 1984 the applicant repeated his request.

On 16 December 1985 the TEE lodged an action against A.S. with the Court of Athens (Monomeles Protodikeio Athinon). The applicant did not join as co-plaintiff.

On 24 April 1986 the Court of Athens gave its decision accepting a part of the TEE's claims.

The TEE and A.S. appealed against this decision. On 11 June 1987 the Athens Court of Appeal (Efeteio Athinon) found in favour of the TEE and ordered A.S. to pay 139.336 Dr., plus the interest due on that amount. However, a TEE claim concerning readjustment of the applicant's remuneration in relation to inflation rates was rejected because no specific amount was claimed in the action. This decision became final on 1 September 1987.

By letter of 10 July 1987 the applicant complained to the TEE that his case was not duly presented to the competent courts. He also requested the TEE to take action for enforcement of the decision.

On 9 May 1988 the applicant complained again to the TEE. Referring to his previous correspondence he claimed that the TEE delayed the introduction of the action, that the calculation of the fee claimed was erroneous, that the TEE failed to claim the specific remuneration for the preparation of tenders and adjustment of the amount of the fee in relation to inflation rates and that it unreasonably delayed the enforcement procedure. He also requested redress of the damage caused by negligence of the TEE.

On 6 July 1988 the TEE replied that in the applicant's case no negligence could be imputed to the TEE and that in any event the applicant had not shown that he had suffered any damage.

II

On 30 July 1985 the Agricultural Bank of Greece (ATE) transferred to the applicant's account in the National Bank of Greece an amount of 351,600 Dr. representing a part of the fee for design projects executed by the applicant.

On 8 August 1985 the applicant delivered a cheque for an amount of 244,000 Dr. which the National Bank refused to pay, since the amount transferred to the applicant's account was credited only on 14 August 1985. The bank informed the Athens prosecutor who charged the applicant with delivery of a cheque without funds.

On 26 November 1986 the Criminal Court of Athens (Monomeles Plimmeleiodikeio Athinon ) held a hearing on the case and examined a witness on the applicant's behalf and the applicant himself. The court found the applicant guilty and sentenced him to fifteen days' imprisonment convertible to a fine of 10,300 Dr. The court's decision was read in the presence of the applicant in open court on the same date.

On 14 December 1987 and 26 January 1988 the applicant complained to the Prosecutor of the Court of Cassation (Areios Pagos) that the decision

of the Athens Court had not been registered in the court's registry within the 15-day time-limit provided by Article 473 para. 3 of the Code of Criminal Procedure.

On 29 March 1988 the applicant received the text of the decision. On the front page it was indicated that the decision had been signed and registered on 10 February 1988.

On 15 April 1988 the applicant appealed before the Court of Cassation. He submitted that the Court of Athens had failed to examine whether the bank's refusal to pay the cheque was justified, i.e. whether the cheque was actually without cover, and contended that his fraudulent intent was not proven. The applicant also complained that the Court of Athens did not examine any witnesses against him and that it failed to deal with his arguments based on Articles 6 para. 1 and 14 of the Convention and Article 1 of Protocol No. 1, which he had developed during the hearing on 26 November 1986. As far as the admissibility of his appeal was concerned the applicant has submitted that the running of the 20-day appeal time-limit began on 29 March 1988, when he received the decision of the Athens Court. He also contended that the registration was irregular.

In its decision of 10 February 1989 the Court of Cassation found that the appeal time-limit began at the latest on 10 February 1988 when the decision was signed and registered. Consequently the Court declared the appeal inadmissible as out of time.

COMPLAINTS

1. As regards the civil proceedings against A.S., the applicant complains that he has not been given a right to a tribunal, since the TEE is exclusively authorised to claim and receive the fee for design projects executed by engineers. He points out that the amount claimed by the TEE was erroneously calculated and that the TEE has failed to claim the specific fee for the preparation of tenders. Moreover the applicant complains of the fact that the TEE delayed the introduction of the action against A.S. for four years and six months and submits that this delay has increased the total length of his litigation with A.S. which has exceeded seven years.

The applicant invokes Article 6 para. 1 of the Convention.

2. He also alleges that the TEE's conduct in the context of this litigation deprived him of his remuneration claims. He invokes Article 1 of Protocol No. 1 to the Convention, alleging that his claims are "possessions" within the meaning of that provision.

3. As regards the criminal proceedings brought against him, the applicant complains that he did not have a fair hearing by an independent court. He submits that the Court of Athens did not examine any witnesses against him. Moreover, as a result of the delayed registration and notification of the decision of the Court of Athens he was not enabled to appeal in time to the Court of Cassation.

The applicant invokes Article 6 paras. 1 and 3 (d) of the Convention.

4. Finally, the applicant alleges that the National Bank of Greece has arbitrarily retained the money transferred to his account for 15 days. He invokes Article 1 of Protocol No. 1 to the Convention.

THE LAW

1. The applicant complains of the provisions of RD/1956 providing that the TEE is exclusively authorised to claim the fee for the projects he had carried out and of the TEE's conduct in the context of the litigation with A.S. He alleges that he was deprived of his right of

access to a court in order to institute proceedings against A.S., that the proceedings instituted by the TEE were unreasonably lengthy and that the TEE's mistakes in the context of this litigation led to the limitation or extinction of his claims. He invokes Article 6 para. 1 (Art. 6-1) of the Contention and Article 1 of Protocol No. 1 (P1-1).

The Commission finds that this part of the application must be examined in particular in the light of the jurisprudence of the European Court of Human Rights concerning the right of access to a court (cf., for example, Golder judgment of 21 January 1975, Series A No. 18, p. 18, para. 36; Airey judgment of 9 October 1979, Series A No. 32, p. 12, para. 24; Ashingdane judgment of 28 May 1985, Series A No. 93, pp. 24-25, para. 57). The Commission notes that on 7 December 1988 a similar complaint by the same applicant was declared admissible following an oral hearing. In these circumstances the Commission considers that it cannot reject this part of the application without the benefit of the observations of the parties.

2. The applicant further complains of the criminal proceedings brought against him, alleging that he did not have a fair hearing by an independent court. He submits in particular that the Court of Athens did not examine witnesses against him. Moreover the Court of Athens delayed the registration and the notification of its decision preventing him from challenging this decision in time before the Court of Cassation. He invokes Article 6 paras. 1 and 3 (d) (Art. 6-1, 6-3-d) of the Convention.

The Commission observes that the applicant's appeal to the Court of Cassation against the decision of the Court of Athens was declared out of time. It recalls that under Article 26 (Art. 26) of the Convention "the Commission may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law" and that there is no exhaustion when a domestic appeal is not admitted because of a procedural mistake (cf. No. 6878/75, Le Compte v. Belgium, Dec. 6.10.76, D.R. 6 p. 79).

In the present case the applicant submits that he was prevented from lodging the appeal in time due to the delayed notification of the decision. The Commission, however, observes that pursuant to domestic legislation the date of the notification of the decision was irrelevant for the running of the appeal time limit. The applicant was present when the decision of the Athens Court was given in open court and according to the deposited judgment the reasons for the decision were then given. Accordingly the applicant has not shown that he was not aware of his conviction or of the reasoning of the challenged decision until reception of the text.

In these circumstances the Commission finds that the examination of the case as it has been submitted does not disclose the existence of any special circumstances which might have absolved the applicant according to the generally recognised rules of international law from exhausting the domestic remedies at his disposal.

It follows that the applicant has not complied with the conditions as to the exhaustion of domestic remedies and that this part of the application must be rejected in accordance with Article 27 para. 3 (Art. 27-3) of the Convention.

3. Finally, the applicant complains that the National Bank of Greece has arbitrarily retained the money transferred to his account for 15 days and alleges that this conduct is not in accordance with the provisions of Article 1 of Protocol No. 1 (P1-1), guaranteeing to every natural or legal person the right to peaceful enjoyment of his possessions.

However, even assuming that the conduct of the National Bank of Greece could entail the responsibility of Greece under the Convention, the Commission observes that the applicant did not

institute proceedings against the Bank in order to obtain redress of the situation he complains of, that is the alleged arbitrary retention of his money.

In these circumstances the Commission finds that the applicant has not complied with the conditions as to the exhaustion of domestic remedies and that this part of the application must be rejected in accordance with Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission

DECIDES TO ADJOURN the examination of the complaints concerning the procedure pursued for recovery of the applicant's fees, referred to under Part I of THE FACTS, and

DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission — Acting President of the Commission

(J. RAYMOND) — (J. A. FROWEIN)