AS TO THE ADMISSIBILITY OF

Application No. 19773/92
by Nicholas PHILIS
against Greece

The European Commission of Human Rights (First Chamber) sitting in private on 31 August 1994, the following members being present:

MM. A. WEITZEL, President
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV

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 15 January 1992 by Nicholas PHILIS against Greece and registered on 27 March 1992 under file No. 19773/92;

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

The applicant is a Greek citizen born in 1937 and residing in Athens. He is a civil engineer by profession. He has introduced to date nineteen applications before the Commission. The European Court of Human Rights found a violation of Article 6 in respect of some of the applicant's complaints in three cases (Nos. 12750/87, 13780/88 and 14003/88). These complaints concerned the applicant's right of access to a court which was limited by domestic laws giving the Technical Chamber of Greece exclusive capacity to take legal proceedings on behalf of engineers. The Committee of Ministers found a violation in respect of some of the applicant's complaints in two other cases (Nos. 15264/89 and 16598/90). These complaints concerned the length of criminal proceedings instituted against the applicant for issuing cheques without funds. The present application relates in part to facts already examined in the applicant's previous applications No. 12750/87, 14003/88, 15068/89 and 15264/89.

I. CIVIL PROCEEDINGS INSTITUTED BY OR ON BEHALF OF THE APPLICANT AGAINST THE OEK

In the period 1971-1978 the OEK (Organismos Ergatikis Katoikias), a public body responsible for the construction of houses for working class families, entrusted the applicant with designing and supervising

the work on electro-mechanical installations. In March 1978 the OEK decided to free itself from all engagements it had with the applicant. The applicant instituted court proceedings against the OEK, claiming remuneration for the design and supervision projects. The litigation centred on the issue of the legal nature of the applicant's relationship with the OEK. The applicant argued that he had concluded a number of agreements with the OEK as an independent engineer and that he was, as a result, entitled to the minimum fees prescribed by a series of laws protecting the income of engineers. The OEK, on the other hand, argued that the applicant was an employee who was only entitled to the salary agreed upon.

The applicant lodged 13 actions with the First Instance Civil Court of Athens (Protodikeio Athinon) between 30 October 1978 and 28 December 1982. The Technical Chamber of Greece, TEE (Tehniko Epimelitirio Ellados), which under domestic law has exclusive capacity to take legal proceedings on behalf of engineers, brought another seven actions against the OEK on behalf of the applicant between 16 December 1977 and 24 December 1982.

On 13 April 1983, while the above-mentioned proceedings were still pending, law 1346/83 came into force. In accordance with this law, all agreements concluded between the OEK and independent engineers or engineers employed by the state or legal persons incorporated under public law before the entry into force of the law shall be deemed to be lawful. The engineers in question shall be remunerated in accordance with the terms of each contract, notwithstanding the provisions of the royal decree 19/21.2.38, the legislative decree 694/74 and law 716/77, which guarantee a minimum level of remuneration for engineers. Law 1346/83 explicitly provided that its provisions would also apply in proceedings pending before the courts.

In five decisions given between 17 January and 22 June 1984 the Court of Cassation (Areios Pagos) applied the provisions of law 1346/83 and rejected both the applicant's and the TEE's claims on the ground that they were based on legal provisions which were not any longer in force.

Following the above decisions the applicant and the TEE discontinued all the original court actions. They re-introduced them before the First Instance Civil Court of Athens between March 1984 and March 1986, basing the claims on the new law.

The First Instance Civil Court, in a series of decisions given between September 1985 and May 1986, considered the claims prescribed under Greek law on the basis of the following reasoning. The period between the end of the financial year in which the claims arose and could be brought before the courts and the date of the introduction of the court actions exceeded five years. The dates of the introduction of the original court actions should not be taken into consideration since the original court actions had a different legal basis and were not identical with the actions they were seized with. On 15 October 1986, 19 November 1986 and 24 November 1986 the Court of Appeal of Athens (Efeteio Athinon) upheld three decisions of the First Instance Civil Court. The TEE introduced on behalf of the applicant appeals in cassation.

On 5 January 1987 the applicant applied to the Commission claiming, inter alia, that Parliament by enacting law 1346/83 cancelled in effect the dispute between him and the OEK which had been submitted to the courts prior to the enactment of this law, compromised the independence and impartiality of the courts, deprived him of his claims and discriminated against him. He invoked in this connection Articles 6 and 14 of the Convention and Article 1 of Protocol No. 1. The application was registered under file No. 12750/87.

On 7 December 1988 the Commission declared all the above-

mentioned complaints inadmissible. The Commission considered that it lacked competence ratione temporis to examine complaints concerning events, such as the enactment of law 1346/83, which had occurred prior to 19 November 1985, date on which the recognition by Greece of the right of individual petition came into effect.

By three judgments pronounced on 7 March and 1 May 1989 the Court of Cassation confirmed the decisions given by the Court of Appeal of Athens on 15 October 1986, 19 November 1986 and 24 November 1986.

On 10 April 1989 the applicant lodged a second application with the Commission. This application was registered under file No. 15068/89.

On 5 November 1990 the Commission declared application No. 15068/89 inadmissible. The applicant's complaints concerning the outcome of the proceedings instituted by him or on his behalf prior to the enactment of law 1346/83 were considered to be essentially the same as the complaints rejected in application No. 12750/87. The applicant's new complaint under Article 6 para. 1 concerning the outcome of the proceedings instituted on his behalf after the enactment of law 1346/83 was rejected as incompatible ratione temporis. The Commission considered that the prescription of the applicant's claims was the direct consequence of the entry into force of law 1346/83 on 13 April 1983 and of the judgements given by the Court of Cassation in 1984 rejecting the applicant's original court actions.

II. CRIMINAL COMPLAINTS BROUGHT BY THE APPLICANT AGAINST OEK OFFICIALS

In the context of his litigation with the OEK the applicant lodged between September 1979 and October 1982 a series of criminal complaints against OEK officials claiming, inter alia, that they had used forged documents in the context of the civil proceedings instituted by him or on his behalf against the OEK. The applicant took part in the ensuing criminal proceedings as a civil party. The majority of the criminal actions ended with discharge orders. In respect of only one such action was an indictment issued. However, the OEK officials were never tried, because the Court of Cassation found on 25 July 1986 that the offence involved had become statute barred.

In his application No. 12750/87 the applicant complained under Article 13 of the Convention of the absence of an effective domestic procedure for the determination of his claims against the OEK officials. In its decision of 7 December 1988 the Commission declared the complaint inadmissible as incompatible ratione materiae with the provisions of the Convention.

In his application No. 15068/89 the applicant introduced the same complaint relying on Articles 6 and 13 of the Convention. The Commission rejected it under Article 27 para. 1 (b) on 5 November 1990.

III. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT FOR INSULTING JUDICIAL AUTHORITIES

During the examination of the criminal complaints he had brought against OEK officials, the applicant addressed a letter to the indictments chamber of the Court of Appeal of Athens on 14 April 1986 in which he claimed that "the proceedings followed by the competent authorities in his various legal actions leave no doubt as to the existence of bias in favour of OEK officials and that the clear purpose of the delay in the proceedings was to ensure that the crimes would be prescribed".

As a result, the Public Prosecutor of the Athens Court of Appeal charged the applicant with insulting the judicial authorities. The applicant was summoned to appear before the investigating judge on

15 October 1986 and again on 2 June 1987. On 12 October 1988 he was sentenced to five months' imprisonment by the First Instance Criminal Court of Athens (Trimeles Plimmeliodikeio). The applicant appealed immediately.

In his application No. 15068/89 the applicant complained about his criminal prosecution. On 7 December 1988 the Commission, considering the complaint under Article 10, rejected it for non-exhaustion of domestic remedies.

On 25 October 1991 the Court of Appeal of Athens allowed the applicant's appeal and pronounced his innocence. The Court of Appeal did not examine a request for compensation submitted by the applicant under Article 71 of the Code of Criminal Procedure. Article 71 empowers criminal courts to pronounce, upon the accused's acquittal, on any claims for expenses or compensation the accused may wish to bring against the persons who have lodged the criminal complaint.

The decision of the court and the record of the hearing were "finalized" (katharographi) on 19 November 1991. They were delivered to the applicant on 28 November 1991. On 9 December 1991 the applicant lodged an application with the Court of Appeal requesting the correction and completion of the record and the decision of the court. On 15 April 1992 the Court rejected the applicant's request as inadmissible on the ground that it had not been submitted within twenty days from the pronouncement of the judgment, ie from 25 October 1991.

IV. DISCIPLINARY PROCEEDINGS AGAINST THE APPLICANT

On 2 August 1982 the President of the Disciplinary Council of the TEE, acting upon a complaint by the OEK, instituted disciplinary proceedings against the applicant for improper behaviour. The proceedings were based on the fact that the applicant had introduced civil proceedings against the OEK and criminal proceedings against engineers working for the OEK. On 20 November 1984 the Disciplinary Council suspended the applicant from practising his profession for a period of ten months on the ground that he had acted improperly by bringing criminal complaints against colleagues in connection with particularly serious offences.

The applicant was notified of the decision by letter of the TEE dated 7 June 1985. On 21 June 1985 the applicant appealed to the Highest Disciplinary Council of the TEE. On 14 April and 18 May 1992 the applicant wrote to the TEE requesting information as to the outcome of his appeal. On 22 May 1992 the TEE replied that the applicant's appeal was under review by one of the members of the Highest Disciplinary Council of the TEE acting as rapporteur and that his appeal would be heard upon submission of the latter's report.

By letter of 17 February 1993 the applicant was invited to attend the hearing of 10 March 1993 of the Highest Disciplinary Council of the TEE. On 5 March 1993 the applicant requested, invoking Article 6 of the Convention, the withdrawal or exception of the entire council. Alternatively he asked for the withdrawal or exception of all members who were not independent or impartial. He also asked for all Article 6 guarantees to be respected, including the right to a public hearing within a reasonable time by an independent and impartial tribunal established by law.

On 10 March 1993 the Council rejected his request of 5 March 1993. However, it allowed the applicant's appeal and pronounced his innocence.

V. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT FOR ISSUING CHEQUES WITHOUT FUNDS

On 26 November 1986 the First Instance Criminal Court of Athens

found the applicant guilty of issuing a cheque without funds. The applicant's appeal in cassation was rejected by the Court of Cassation on 10 February 1989 on the basis that it had been introduced out of time.

The applicant complained in respect of these proceedings in application No. 14003/88. In its partial decision of 5 and 9 May 1989 the Commission rejected the complaint for non-exhaustion of domestic remedies. A second complaint concerning the absence of inadequacy of reasoning in the above-mentioned decisions of the First Instance Criminal Court and the Court of Cassation was rejected as manifestly ill-founded in a partial decision taken by the Commission on 5 November 1990 on application No. 15264/89.

COMPLAINTS

1. The applicant claims that he has been deprived of his right to protect himself effectively against activities aimed at the destruction of his rights under the Convention, and more in particular his property rights under Article 1 of Protocol No. 1 and his right to have a fair trial in the determination of his civil rights and obligations under Article 6 of the Convention. In this connection he first refers to the enactment of law 1346/83 and the resulting prescription of the civil actions against the OEK.

2. Invoking the same arguments and the same provisions of the Convention the applicant complains of the outcome of the criminal actions he brought against OEK officials.

3. The applicant further complains of the effect that the criminal and disciplinary proceedings against him had on his right to a fair hearing in the criminal proceedings he had instituted against OEK officials. He invokes in this connection Article 6 of the Convention in conjunction with Article 1 of Protocol No. 1.

4. The applicant also complains under Article 8 of the Convention of the effects which the above-mentioned procedural developments continue to have on his private, family and professional life. He also complains of discrimination in the enjoyment of his fair trial rights, contrary to Article 14 taken together with Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1.

5. The applicant complains that his right to a fair hearing under Article 6 of the Convention was violated in that, despite his acquittal on 25 October 1991 in the proceedings instituted against him for insulting the judicial authorities, the Court of Appeal of Athens refused to grant him compensation.

6. The applicant complains under Article 6 of the length of the criminal proceedings against him for insulting the judicial authorities. He also complains that he was deprived of his right under Article 6 para. 3 (c) "to defend himself in person" in the same proceedings, in that he was only allowed to address the courts as an accused person.

7. The applicant complains of the rejection by the Athens Court of Appeal on 12 April 1992 of his request for correction of the court decision and records.

8. The applicant complains under Article 6 of the Convention of the length of the disciplinary proceedings against him. He also claims that he has not been tried by an independent and impartial tribunal established by law. He also complains of the non-public character of the proceedings.

9. The applicant complains of the rejection of his appeal in cassation on 10 April 1989 in the criminal proceedings concerning the

issuing of cheques without funds.

THE LAW

1. The applicant complains that he has been deprived of his right to protect himself effectively against activities aimed at the destruction of his right to have a fair trial in the determination of his civil rights and obligations under Article 6 (Art. 6) of the Convention and to enjoy peacefully his possessions under Article 1 of Protocol No. 1 (P1-1). He refers to the enactment of law 1346/83 and the resultant prescription of the civil actions against the OEK.

The Commission recalls that under Article 27 para. 1 (b) (Art. 27-1-b) of the Convention it shall not deal with an application which is substantially the same as a matter which has already been examined by the Commission and contains no relevant new information. It finds that the above complaints are substantially the same as the complaints rejected in Applications No. 12750/87 and 15068/89.

It follows that this part of the application must be rejected pursuant to Article 27 para. 1 (b) (Art. 27-1-b) of the Convention.

2. The applicant complains under Article 6 (Art. 6) of the Convention and Article 1 of Protocol No. 1 (P1-1) of the outcome of the criminal actions he brought against OEK officials.

The Commission recalls that under Article 27 para. 1 (b) (Art. 27-1-b) of the Convention it shall not deal with an application which is substantially the same as a matter which has already been examined by the Commission and contains no relevant new information. It finds that the above complaints are substantially the same as the complaints rejected in Applications No. 12750/87 and 15068/89.

It follows that this part of the application must be rejected pursuant to Article 27 para. 1 (b) (Art. 27-1-b) of the Convention.

3. The applicant complains of the effect that the criminal and disciplinary proceedings against him had on his right to a fair hearing in the criminal proceedings he had instituted against OEK officials. He invokes in this connection Article 6 of the Convention in conjunction with Article 1 of Protocol No. 1 (Art. 6+P1-1).

The Commission notes that the applicant, in addition to having lodged the criminal complaint, participated as a civil party in the proceedings against the OEK officials. As a result, if these proceedings had not been discontinued, they could have involved a determination of his civil right to compensation (see Eur. Court H.R., Tomasi judgment of 27 August 1992, Series A no. 241-A, p. 43, para. 121).

The Commission considers that an issue could arise under Article 6 (Art. 6), if the threat of and the eventual institution of criminal and disciplinary proceedings against the applicant led to his being genuinely inhibited from bringing his claims before the domestic courts.

In this connection the Commission recalls, mutatis mutandis, the Brandstetter judgment where the Court considered the following:

> "the mere possibility of an accused being subsequently prosecuted on account of allegations made in his defence cannot be deemed to infringe his rights under Article 6 (3) (c) (Art. 6-3-c). The position might be different if it were established that, as a consequence of national law or practice in this respect being unduly severe, the risk of subsequent prosecution is such that the defendant is genuinely inhibited from freely exercising these rights" (Eur. Court H.R.,

Brandstetter judgment of 28 August 1991, Series A no. 211, p. 23, para. 53)."

However, in the circumstances of the particular case the Commission notes that the applicant has not been in the least inhibited from instituting and pursuing criminal proceedings against the OEK officials, as a result of the threat of and eventual institution of criminal and disciplinary proceedings against him.

Insofar as the applicant refers to Article 1 of Protocol No. 1 (P1-1) in this connection, the Commission finds the complaint unsubstantiated.

In this light, the Commission considers that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant also complains under Article 8 (Art. 8) of the Convention of the effects which the above-mentioned procedural developments continue to have on his private, family and professional life. He also complains of discrimination in the enjoyment of his fair trial rights, contrary to Article 14 taken together with Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 (Art. 14+6+8+P1-1).

However, insofar as the matters complained of have been substantiated and are within its competence, the Commission finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

5. The applicant complains that his right to a fair hearing under Article 6 (Art. 6) of the Convention was violated in that, despite his acquittal on 25 October 1991, the Court of Appeal of Athens refused to grant him compensation.

The Commission recalls in this connection its constant case-law to the effect that neither Article 6 (Art. 6) nor any other provision in the Convention implies any obligation on the part of the High Contracting States to see to it that a person who is acquitted of criminal charges is free of any charge resulting from costs and expenses related to the proceedings in question (see, inter alia, No. 9531/81, Dec. 6.10.82, D.R. 31 p. 213).

In this light, the Commission does not consider that the applicant's rights under the Convention have been violated when the domestic court did not examine his application for compensation in respect of damages he claims to have suffered in the context of criminal proceedings which resulted in his acquittal.

As a result, this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

6. The applicant complains under Article 6 (Art. 6) of the length of the criminal proceedings against him for insulting the judicial authorities. He also complains that he was deprived of his right under Article 6 para. 3 (c) (Art. 6-3-c) "to defend himself in person" in the same proceedings, in that he was only allowed to address the courts as an accused person.

In connection with the latter complaint the Commission recalls its constant case-law under Article 6 para. 3 (c) (Art. 6-3-c) to the effect that "this paragraph guarantees to an accused person that the proceedings against him will not take place without an adequate representation of his defence, but does not give an accused person the right to decide himself in which way his defence should be assured" (see No. 5923/72, Dec. 30.5.75, D.R. 3 p. 43).

In this light, the Commission considers that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Insofar as the applicant complains of the length of the criminal proceedings, the Commission considers that this part of the application cannot be determined without the benefit of the observations of the parties and finds that the examination of this complaint should be adjourned.

7. The applicant complains of the rejection by the Athens Court of Appeal on 12 April 1992 of his request for correction of the court decision and records.

However, insofar as the matters complained of have been substantiated and are within its competence, the Commission finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

This part of the application must be, therefore, rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

8. The applicant complains under Article 6 (Art. 6) of the Convention of the length of the disciplinary proceedings against him. He also claims that he has not been tried by an independent and impartial tribunal established by law. Finally, he complains of the non-public character of the proceedings.

Insofar as the applicant complains of the non-public character of the proceedings and the independence, impartiality and lawfulness of the establishment of the disciplinary tribunal, the Commission notes that the applicant was finally acquitted of the disciplinary charges against him. In this light and on the assumption that Article 6 (Art. 6) applied in these proceedings, the Commission considers, in accordance with its constant case-law, that the applicant cannot claim to be a victim of a violation of Article 6 (Art. 6) of the Convention (see, e.g., No. 15831/89, Dec. 27.2.91, D.R. 68 p. 319).

As a result, the Commission considers that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Insofar as the applicant complains of the length of the disciplinary proceedings, the Commission considers that this part of the application, including the question of the applicability of Article 6 (Art. 6), cannot be determined without the benefit of the observations of the parties and finds that the examination of this complaint should be adjourned.

9. The applicant, finally, complains of the rejection of his appeal in cassation on 10 February 1989 in the criminal proceedings concerning the issuing of cheques without funds.

The Commission recalls that under Article 27 para. 1 (b) (Art. 27-1-b) of the Convention it shall not deal with an application which is substantially the same as a matter which has already been examined by the Commission and contains no relevant new information. It finds that the above complaints are substantially the same as the complaints rejected in Application No. 15264/89.

It follows that this part of the application must be rejected pursuant to Article 27 para. 1 (b) (Art. 27-1-b) of the Convention.

For these reasons, the Commission, unanimously

DECIDES TO ADJOURN the examination of the complaints concerning

(a) the length of criminal proceedings brought against the applicant for insulting the judicial authorities and
(b) the length of the disciplinary proceedings brought against the applicant;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (A. WEITZEL)