AS TO THE ADMISSIBILITY OF

Application No. 23202/94
by Nicholas PHILIS
against Greece

The European Commission of Human Rights (First Chamber) sitting in private on 5 March 1996, the following members being present:

Mrs. J. LIDDY, Acting President
MM. C.L. ROZAKIS
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

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 20 September 1993 by Nicholas PHILIS against Greece and registered on 7 January 1994 under file No. 23202/94;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the Commission's decision of 11 January 1995 to communicate the applicant's complaints regarding his unsuccessful attempt to intervene in the proceedings instituted on his behalf by the TEE against the Children's Hospital of Penteli and the length of the proceedings against the same hospital and to declare inadmissible the remainder of the application;

- the observations submitted by the respondent Government on 24 May 1995 and the observations in reply submitted by the applicant on 6 July 1995 and 24 November 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Greek citizen born in 1937. He is an engineer and resides in Athens.

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

a) Particular circumstances of the case

On 30 October 1981 the Public Foundation for Social Welfare and Assistance (Patriotiko Idrima Kinonikis Pronias ke Antilipseos), a public

body under the authority of the Ministry of Health and Social Welfare, commissioned the applicant to design a project for the extension of the heating system of one of its hospitals, the Penteli Children's Hospital (Pediko Nosokomio Pentelis - hereafter PNP).

When a dispute arose concerning the fees to be paid to the applicant, the latter instituted civil proceedings before the Court of Appeal (Efetio) of Athens on 1 August 1984. On 16 November 1987 the Court of Appeal dismissed the action. The court considered that, by virtue of the royal decree 30/1956, only the Technical Chamber of Greece (Tehniko Epimelitirio Ellados - hereafter TEE) had capacity to bring proceedings to recover payment of fees, being subrogated to the rights of the engineer for these purposes.

On 6 April 1988 the applicant lodged an application with the European Commission of Human Rights complaining, inter alia, that the decision of the Athens Court of Appeal violated his right of access to court (application No. 13780/88). On 11 October 1989 the Commission declared the complaint admissible.

On 30 November 1989 the applicant requested the TEE to institute proceedings against the PNP for the recovery of his fees for the project mentioned above. The TEE complied with the applicant's request on 27 December 1989.

On 21 May 1990 the complaint which had been declared admissible by the Commission on 11 October 1989 was referred to the European Court of Human Rights.

On 25 September 1990 the TEE requested the adjournment of the proceedings before the Athens Court of Appeal to await the delivery of the judgment of the European Court of Human Rights. On 18 October 1990 the Court of Appeal acceded to this request.

On 27 August 1991 the European Court of Human Rights rendered its judgment (Eur. Court H.R., Philis judgment of 27 August 1991, Series A no. 209). The Court considered that the royal decree 30/1956, which gave the TEE exclusive capacity to take legal proceedings for the recovery of fees payable to engineers, violated the applicant's right of access to court under Article 6 para. 1 of the Convention.

On 8 October 1992 the applicant intervened in the domestic proceedings in support of the TEE. His intervention was lodged under Article 80 of the Code of Civil Procedure (prostheti paremvasi).

On 1 December 1992 the Court of Appeal adjourned the examination of the case, as the lawyers were on strike. On 16 February 1993 the applicant attempted to represent himself in the proceedings, as his lawyer was on strike. The court, however, considered the applicant to be absent and adjourned once more the examination of the case. A hearing was finally held on 25 May 1993, in which the applicant was represented by a lawyer and which the TEE did not attend.

On 19 July 1993 the Athens Court of Appeal issued a decision rejecting the applicant's intervention with the following reasoning. The court first examined the express terms of the applicant's request and noted that the applicant sought to obtain a ruling from the court ordering the PNP to pay the sum of money in issue directly to him. Such a request, however, could not be reconciled with the formal nature of the applicant's intervention (prostheti paremvasi).

The court further considered that the applicant's request could be interpreted in a different manner, as if the applicant were seeking to substitute himself to the TEE as the principal plaintiff in the action the subject-matter of which remained the same, i.e. payment of the fees to the TEE. Under national law, however, this could not happen without the agreement of both the TEE and the PNP. Although the non-appearance

of the TEE at the hearing of 25 May 1993 could be taken to signify tacit agreement, the consent of the PNP was not forthcoming.

Finally, the court considered that it should examine the real nature of the applicant's intervention which was in essence an intervention under Article 79 of the Code of Civil Procedure (kiria paremvasi) by which the applicant vindicated the right to sue directly the PNP. However, in its judgment of 16 November 1987 the Court of Appeal had already considered that the applicant had no such right. This decision constituted res judicata between the applicant and the PNP. The judgment of the European Court of Human Rights of 27 August 1991 could not set aside the res judicata effect of that judgment. In the light of all the above, the Court of Appeal considered that it could not allow the applicant's intervention.

On 15 December 1993 the Special Supreme Court (Anotato Idiko Dikastirio) pronounced on a dispute which arose between the Council of State (Simvulio Epikratias) and the Court of Cassation (Arios Pagos) as to the lawfulness of the promulgation of the royal decree 30/1956. The Special Supreme Court held that the Act of Parliament on the basis of which the royal decree 30/1956 had been promulgated did not envisage a system whereby the TEE would have exclusive capacity to take legal proceedings for the recovery of fees payable to engineers.

On 11 March 1994 the royal decree 30/1956 was amended to give engineers the right to institute proceedings themselves for the recovery of their fees.

On 5 December 1994 the Committee of Ministers of the Council of Europe declared that it had exercised its functions under Article 54 of the Convention following the European Court's judgment of 27 August 1991.

The action brought by the TEE against the PNP is still pending.

b) Relevant domestic law

The Code of Civil Procedure provides the following in respect of third party interventions:

Article 79 para. 1

"A third person who claims in whole or in part what is at stake in a trial which is pending between others has the right to intervene .... in the proceedings"

Article 80

"If, in proceedings pending before a court, a third party has an interest in the success of one of the parties, he may intervene in support of the claims of that party until final judgment has been given."

Article 82

"The intervener may take all procedural steps permitted by law in the interests of the party in support of which he has intervened ..."

Article 85

"If both the plaintiff and the defendant agree, the person who has intervened in support of either one of them has the right to take the place of the party in support of which he has intervened. The original party concerned does not participate any longer in the proceedings. ...."

COMPLAINTS

1. The applicant complains that, by rejecting his intervention, the Court of Appeal failed to ensure effective respect for his right of access to a court under Article 6 para. 1 of the Convention. He claims that the decision of 19 July 1993 of the Court of Appeal was final in that it could not be challenged before the Court of Cassation.

2. The applicant also complains that, despite his financial situation, he had to be represented by counsel and was not allowed to represent himself in his attempt to intervene in the proceedings. This amounts to a violation of his right of access to court under Article 6 para. 1 of the Convention as well.

3. Originally, the applicant complained under Article 6 para. 1 of the Convention about the length of the proceedings instituted by him or on his behalf against the PNP. In his observations in reply the applicant declared that he wished to complain only about the length of the proceedings instituted on his behalf by the TEE on 27 December 1989.

4. In his observations in reply of 6 July 1995 the applicant also complained for the first time of a violation of Article 13 of the Convention, in that he did not have an effective remedy under national law for the above-mentioned violations of his rights under Article 6 para. 1 of the Convention. The decision of 19 July 1993 of the Court of Appeal was final and he could not obtain redress for the delays in the proceedings instituted on his behalf by the TEE.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 September 1993 and registered on 7 January 1994.

On 11 January 1995 the Commission (First Chamber) invited the Government to submit written observations on the admissibility and merits of the applicant's complaints regarding his unsuccessful attempt to intervene in the proceedings instituted on his behalf by the TEE against the Children's Hospital of Penteli and the length of the proceedings against the same hospital. The Commission declared inadmissible the remainder of the application.

The Government's observations were submitted on 24 May 1995 after an extension of the time-limit fixed for this purpose. On 6 July 1995 and 24 November 1995 the applicant submitted his observations in reply after an extension of the time-limit fixed for this purpose.

THE LAW

1. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that, by rejecting his intervention by a decision which was final, the Court of Appeal failed to ensure effective respect for his right of access to a court under Article 6 para. 1 (Art. 6-1) of the Convention.

Article 6 para. 1 (Art. 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 .... hearing .... by a .... tribunal ...."

The Government argue that, after the decision of 15 December 1993 of the Special Supreme Court, the applicant could have re-introduced himself his claims against the PNP. The applicant had the right to do so, because the decisions of the Special Supreme Court have the effect of legislation.

The applicant submits that it amounts to lack of respect for the Convention to argue that the decisions of the Special Supreme Court have

the effect of legislation, while the decisions of the European Court of Human Rights do not. He further notes that, although the Philis judgment of the Court was rendered on 27 August 1991, the royal decree 30/1956 was not amended before 11 March 1994. He submits that the Government should not be allowed to take advantage of their failure to comply with their obligations under the Philis judgment for two and a half years.

The Commission notes that, after the Court of Appeal refused to accept the applicant's intervention in the proceedings, the Supreme Court ruled that the Act of Parliament on the basis of which the royal decree 30/1956 had been promulgated did not envisage a system whereby the TEE would have exclusive capacity to take legal proceedings for the recovery of fees payable to engineers. The Commission further notes that the applicant has not submitted anything which could refute the Government's claim that, after the decision of 15 December 1993 of the Special Supreme Court, he could have re-introduced his claims against the PNP by lodging a new action himself. The Commission also notes that on 11 March 1994 the royal decree 30/1956 was formally amended to give engineers the right to institute proceedings themselves for the recovery of their fees. In these circumstances, the Commission considers that it has not been established that the applicant does not have direct access to a court for the determination of his civil rights. It follows that no appearance of a violation of the applicant's right of access to a court under Article 6 para. 1 (Art. 6-1) of the Convention is disclosed.

The Commission considers, therefore, that this part of the application must be rejected as manifestly ill-founded in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains that, despite his financial situation, he had to be represented by counsel and was not allowed to represent himself in his attempt to intervene in the proceedings. This amounts to a violation of his right of access to court under Article 6 para. 1 (Art. 6-1) of the Convention as well.

The Commission recalls that, in accordance with its case-law, a tribunal which rejects a claim on procedural grounds is not determining a dispute on civil rights and obligations (No. 10865/84, Dec. 12.5.86, D.R. 47, p. 163). It also notes that the Court of Appeal rejected the applicant's intervention because, insofar as it could be considered to be an intervention in support of TEE, it did not fulfil the procedural conditions of Articles 80 and 85 and, insofar as it could be considered to be an intervention under Article 79, it was inadmissible because of the res judicata effect of a previous court decision. The Commission, therefore, considers that, when rejecting the applicant's intervention, the Court of Appeal did not determine a dispute on civil rights and obligations and that the relevant proceedings fall outside the scope of Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that the Commission has no competence ratione materiae to examine this part of the application which must be rejected in accordance with Article 27 para. 2 (Art. 27-2) as being incompatible with the provisions of the Convention.

3. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention about the length of the proceedings instituted on his behalf against the PNP.

The Commission recalls that Article 6 para. 1 (Art. 6-1) of the Convention also guarantees the right to hearing within a reasonable time in the determination of one's civil rights and obligations.

The Government submit that the public authorities were not responsible for any of the delays in the proceedings. It was at the applicant's insistence that the Court of Appeal decided to adjourn the proceedings on 25 September 1990. Moreover, the applicant did not seek to intervene in the proceedings before 8 October 1992. The delays which

occurred thereafter and until the rejection of the applicant's intervention were all caused by the lawyers' strike.

The applicant submits that, although the proceedings were instituted by the TEE, they involved a determination of his civil rights under the contract he had with the PNP. The applicant could not at the time sue himself for the recovery of his fees. He further submits that all the delays in the proceedings were imputable to State authorities.

The Commission recalls that it has previously considered that the same applicant could complain under Article 6 para. 1 (Art. 6-1) of the Convention of the length of proceedings instituted on his behalf by the TEE, because he had intervened in the proceedings and the aim of the proceedings was the recovery of the applicant's fees (No. 12750/87, Dec. 7.12.88, unpublished). The present case differs in that the applicant was not allowed to intervene in the proceedings, having presented his request for intervention in a manner which did not satisfy the requirements of national law. Moreover, it has not been established that the proceedings instituted by the TEE continue to constitute, after the decision of 15 December 1993 of the Special Supreme Court and the amendment of the royal decree 30/1956, the only means for the recovery of the applicant's fees.

Nevertheless, the Commission considers that it need not decide whether Article 6 para. 1 (Art. 6-1) of the Convention applies in the proceedings in question, because the applicant's complaint is in any event manifestly ill-founded.

The Commission notes that the proceedings began on 27 December 1989, when the TEE lodged the action on behalf of the applicant, and that they are still pending.

The Commission further notes that the action lodged by the TEE on the applicant's behalf came for hearing on 25 September 1990, i.e. nine months after the institution of the proceedings, a period which was reasonable in the circumstances of the case. Then, on 18 October 1990 the national court decided to adjourn the examination of the case, pending delivery of the judgment of the European Court of Human Rights in the applicant's case, a decision which was dictated by the commands of a proper administration of justice.

It is true that, after the delivery of the judgment of the European Court of Human Rights on 27 August 1991, the TEE does not appear to have taken any steps to expedite the proceedings. However, in accordance with the Commission's case-law, in civil matters the exercise of the right to a hearing within a reasonable time is dependent on the diligence of the interested party (No. 7370/76, Dec. 28.2.77, D.R. 9, p. 95).

The Commission must, therefore, also examine whether the applicant himself used the means put at his disposal by national law to expedite the proceedings (cf., No. 12750/87, supra). In this connection the Commission notes that, although the Philis judgment of the European Court was delivered on 27 August 1991, the applicant did not seek to intervene in the proceedings before 8 October 1992. Moreover, his request to intervene was not lodged in accordance with the requirements of national law and had to be rejected by the court as inadmissible. The Commission notes that, if the applicant had made a valid intervention at an earlier stage in the proceedings, he would have had ample opportunity under national law to contribute to the speedy conduct of the proceedings.

In these circumstances, the Commission considers that, even assuming that Article 6 para. 1 (Art. 6-1) of the Convention applies in the proceedings in question, no appearance of a violation of the applicant's right to a hearing within a reasonable time is disclosed (see, mutatis mutandis, No. 12750/87, supra). It follows that this part of the application must be rejected as manifestly ill-founded in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant complains of a violation of Article 13 (Art. 13) of the Convention in that he could not appeal against the decision of the Court of Appeal of 19 July 1993, which allegedly refused him access to court in the determination of his civil rights and obligations.

The Commission recalls that Article 13 (Art. 13) of the Convention guarantees the right to an effective remedy for everyone whose rights and freedoms as set forth in the Convention are violated.

In accordance, however, with the Commission's case-law, Article 6 para. 1 (Art. 6-1) of the Convention provides a more rigorous procedural guarantee than Article 13 (Art. 13) of the Convention and, therefore, operates as a lex specialis with regard to a civil right, to the exclusion of Article 13 (Art. 13) of the Convention (No. 11949/86, Dec. 1.12.86, D.R. 51, p. 195). The Commission has already found that it has not been established that the applicant lacks direct access to court for the determination of his civil rights, as required by Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that no appearance of a violation of Article 13 (Art. 13) is disclosed either and that this part of the application must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicant also complains of a violation of Article 13 (Art. 13) of the Convention in that he could not obtain redress for the delays in the proceedings instituted on his behalf by the TEE.

The Commission recalls that, in accordance with its case-law, the right to an effective remedy before a national authority can only be claimed by someone who has arguable claim to be the victim of a violation of a right recognised by the Convention (No. 11603/85, Dec. 20.1.87, D.R. 50, p. 228). This is not, however, the applicant's case.

This part of the application must be, therefore, rejected s being manifestly ill-founded in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES INADMISSIBLE the remainder of the application.

Secretary
to the First Chamber

(M.F. BUQUICCHIO)

Acting President
of the First Chamber

(J. LIDDY)