PARTIAL DECISION

AS TO THE ADMISSIBILITY

Application No. 23202/94
by Nicholas PHILIS
against Greece

The European Commission of Human Rights (First Chamber) sitting in private on 11 January 1995, the following members being present:

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

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 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 1937 and residing in Athens.

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

I. PROCEEDINGS AGAINST THE PENTELI CHILDREN'S HOSPITAL

On 30 October 1981 the Public Foundation for Social Welfare and Assistance (Patriotiko Idryma Koinonikis Pronoias kai 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 (Paidiko Nosokomeio Pentelis - hereafter PNP).

On 1 August 1984 the applicant instituted civil proceedings against the PNP before the Court of Appeal (Efeteio) of Athens to recover payment of fees. On 16 November 1987 the Court of Appeal dismissed the applicant's action, considering 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. The application was registered on 20 April 1988 under No. 13780/88.

By letter dated 30 November 1989 the applicant requested the TEE to institute proceedings against the PNP. The TEE complied with the applicant's request on 27 December 1989.

On 25 September 1990 the TEE requested the adjournment of these proceedings pending the judgment of the European Court of Human Rights in the Philis case. On 18 October 1990 the Court of Appeal acceded to this request.

On 27 August 1991 the European Court of Human Rights delivered its judgment on applications No. 13780/88 lodged by the applicant against Greece (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 (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 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 rejected the applicant's intervention. Insofar as it could be argued that the TEE had agreed to its action being taken over by the applicant, the court considered that this did not render the applicant the principal plaintiff. Under national law the agreement of the PNP was required as well and this was not forthcoming. Insofar as the applicant was seeking to obtain a ruling from the court ordering the PNP to pay the sum of money in issue directly to him, the court considered that such a request could not be reconciled with the nature of the applicant's intervention. Insofar as the real aim of the applicant's intervention was to resubmit to the court his dispute with the PNP (kyria paremvasi), the court considered that the judgment of the European Court of Human Rights in the Philis case did not set aside automatically its own judgment of 16 November 1987 which constituted res judicata between the parties to this dispute. In this light, the court was prevented under national law from granting the applicant's request.

In accordance with the legislative decree 1266/1972, judgments rendered by the Court of Appeal in public works disputes could not be challenged before the Court of Cassation. Although this category of litigants were subsequently given the right to appeal in cassation on certain limited grounds by Act 1418/1984, the law specified that only decisions of the Court of Appeal concerning public works contracts concluded after 1 February 1986 could be challenged.

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

II. PROCEEDINGS RELATING TO THE DISPUTE WITH A.S.

In November 1980 a public works contractor, A.S., commissioned the applicant to draw up certain plans.

On 16 December 1985 the TEE instituted proceedings on the applicant's behalf before the First Instance Civil Court (Protodikeio) of Athens to recover payment of fees. On 26 April 1986 the action was allowed in part. The TEE and A.S. challenged the judgment in the Athens Court of Appeal. On 11 June 1987 that court ordered A.S. to pay the TEE GDR 139.336 plus interest. Not being satisfied with the outcome of the proceedings, the applicant wrote to the TEE on 10 July 1987 accusing it of not having properly represented his interests in the proceedings and asking it to institute enforcement proceedings in relation to the judgment of 11 June 1987.

By letter of 6 July 1988 the TEE refuted the applicant's allegations and informed him that A.S. had already paid the interest and legal costs and had sought authorization to

pay the remaining sum in ten monthly instalments. It further invited the applicant to inform it of any property of A.S. which could be liable to attachment.

On 4 February 1992 the applicant lodged with the First Instance Civil Court of Athens an action against A.S., the TEE and the Greek State claiming GDR 3.211.424. He represented himself in the proceedings.

The hearing of this action was adjourned on 12 May 1992, 9 June 1992, 29 September 1992, 3 November 1992 and 15 December 1992 because of the lawyers' strike. The applicant's action was finally heard on 9 February 1993.

On 30 April 1993 the court rejected the action, considering the applicant not to have participated in the proceedings, as he had failed to pre-pay part of the court fees, as required by national law. In its decision the court mentioned that "it had delayed the delivery of the judgment hoping to communicate with the applicant, but the latter's telephone number was not mentioned in the written pleas he had submitted in support of his action". The applicant appealed and the appeal procedure is still pending.

III. PROCEEDINGS RELATING TO THE DISPUTE WITH THE ORGANISATION FOR LABOUR HOUSING

On 16 December 1991 the applicant lodged an action with the First Instance Civil Court of Athens against the Autonomous Organisation for Labour Housing (Autonomos Organismos Ergatikis Katoikias - hereafter OEK), the TEE and the Greek State. A hearing fixed for 7 April 1992 was cancelled, as the applicant had failed to pre-pay the court fees.

COMPLAINTS

I. Proceedings against the PNP

1. The applicant complains that Greece continues to deny him the right to institute proceedings directly and independently for the recovery of payment of fees owed to him, not having abolished the law which give the TEE exclusive capacity to take legal proceedings for this purpose, in disregard of the judgment delivered by the European Court for Human Rights. He invokes in this connection Article 6 para. 1 of the Convention.

He further argues that in the absence of any legislative measures, the Court of Appeal should have allowed him to intervene in the proceedings instituted by the TEE against the PNP to ensure effective respect for his right of access to a court. By rejecting his intervention, the Court of Appeal violated his rights under Article 6 of the Convention.

He also complains that, his financial situation notwithstanding, he had to be represented by counsel and was not allowed to represent himself in his attempt to intervene in the proceedings instituted on his behalf by the TEE against the PNP. In the applicant's view, this amounts to a violation of his right of access to court under Article 6 para. 1 of the Convention as well.

2. The applicant also complains under Article 6 para. 1 of the Convention about the length of the proceedings instituted by him or on his behalf against the PNP, which at the time of the introduction of his application had already exceeded nine years.

3. The applicant complains that the legislative decree 1266/1972 in conjunction with Act 1418/1984 deprived him of the right to appeal in cassation in a discriminatory manner. He invokes in this connection Article 14 of the Convention in combination with Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1.

II. Proceedings against A.S.

4. The applicant complains under Article 6 para. 1 of the Convention about the arbitrary rejection by the First Instance Civil Court of his action against the A.S. on the ground that he had failed to pre-pay part of the court fees.

III. Proceedings against the OEK

5. The applicant complains under Article 6 para. 1 of the Convention that by requiring him to pre-pay the court fees national law effectively deprives him of the right to have access to a court which will hear his action against the OEK. Invoking the same Convention provision, he also complains of the length of the relevant proceedings.

6. The applicant complains that the above-mentioned limitations of his right of access to a court, taken together with a series of human rights violations of which he has complained in his previous applications, have made it impossible for him to continue to exercise his profession and earn his living for the last eight years. This amounts to a violation of his rights under Article 8 of the Convention.

7. The applicant finally argues that by limiting his right of access to a court in the manner described above the Greek courts have deprived him of his claims against PNP, A.S. and OEK, which constitute possessions within the meaning of Article 1 of Protocol No. 1.

THE LAW

I. Proceedings against the PNP

1. The applicant complains of the continued failure of the Greek state and courts to implement the judgment of the European Court of Human Rights in the Philis case, which arise out of his previous applications No. 12750/87, 13780/88 and 14003/88 by

repealing the offending legislation or allowing him to become the principal plaintiff in proceedings instituted by the TEE on his behalf against the PNP. He also complains that, his financial situation notwithstanding, he had to be represented by counsel and was not allowed to represent himself in his attempt to intervene in the proceedings instituted on his behalf by the TEE against the PNP. He invokes in this connection Article 6 para. 1 of the Convention.

The Commission first recalls that it has no competence to examine whether the High Contracting Party has complied with its obligation under a judgment given by the European Court of Human Rights. The supervision of the Court's judgment is entrusted under Article 54 of the Convention to the Committee of Ministers (see No. 10243/83, Dec. 6.3.85, D.R. 41 p. 123 at 129; No. 19438/92, Dec. 29.3.93, to be published in D.R.)

However, insofar as the applicant complains about the decision of the Athens Court of Appeal of 19 July 1993 rejecting his application to intervene as the principal plaintiff in the proceedings instituted by the TEE on his behalf against the PNP, which was taken after the Philis judgment of the European Court of Human Rights, the Commission considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary in accordance with Rule 48 para. 2(b) of the Rules of Procedure, to give notice of this part of the application to the respondent Government.

2. The applicant complains of the length of the proceedings instituted by him and on his behalf against the PNP. He invokes in this connection Article 6 para. 1 of the Convention.

The Commission recalls that Article 6 of the Convention guarantees the right to a hearing within a reasonable time in the determination of civil rights and obligations.

The Commission considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary in accordance with Rule 48 para. 2(b) of the Rules of Procedure, to give notice of this part of the application to the respondent Government.

3. The applicant complains that a new law which introduced the right to appeal in cassation decisions of the Court of Appeal concerning public works disputes provided that only decisions which concerned contracts concluded after 1 February 1986 could be challenged. As the applicant was suing for breach of contracts which had been concluded before that date, he considers that he was deprived of the right to appeal in cassation in a discriminatory manner. He invokes in this connection Article 14 of the Convention in combination with Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1.

The Commission recalls that a measure, which in itself is in conformity with the requirements of the Article enshrining the right or freedom in question, may, however, infringe the Article when read in conjunction with Article 14 if it is of a discriminatory nature (Eur. Court H.R., Belgian Linguistic judgment of 23 July 1968, Series A no. 6, p.

33, para. 9). It further recalls that, in accordance with its constant case-law, the Convention does not require States to establish courts of appeal or cassation. If, however, such courts are created, the requirements of Article 6 of the Convention must be respected (No. 9177/80, Dec. 6.10.81, D.R. 26 p. 255).

In the circumstances, however, of the present case, the Commission does not consider it necessary to examine whether, in the light of this case-law and the fact that a right to appeal in cassation was eventually recognised under domestic law, the different treatment complained of concerned a right guaranteed by the Convention.

Even assuming that this were the case, the Commission does not consider that an issue could arise under Article 14 of the Convention.
In accordance with the Commission's case-law, the right of access to a court is not an absolute right and does not prevent the Contracting Parties from regulating the manner in which the public may have access to courts in order to ensure the proper administration of justice (No. 17070/90, Dec. 1.10.90, D.R. 66 p. 268).

The Commission notes that the law complained of merely specified that the right to appeal in cassation in public works disputes would only apply in respect of contracts concluded after a certain date in the future. In this respect it does not differ from a great number of laws which apply prospectively and not retrospectively to protect legal certainty. In the absence of any indication that the date in the new law was fixed arbitrarily to prejudice the interests of the applicant, the Commission considers that there exists an objective or reasonable justification for the difference in treatment complained of.

In these circumstances, the Commission considers that, even if the situation complained of by the applicant could be brought within the ambit of Article 6 of the Convention, no appearance of a violation of Article 14 together with Article 6 of the Convention 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.

II. Proceedings against A.S.

5. The applicant complains under Article 6 para. 1 of the Convention about the rejection of his action against the A.S. on the ground that he had failed to pre-pay part of the court fees.

The Commission notes that, in accordance with the submissions of the applicant, his appeal against the relevant decision of the domestic court is still pending.

In these circumstances, the Commission does not consider that the applicant has exhausted domestic remedies, as required under Article 26 of the Convention. This part of the application must be rejected, therefore, in accordance with Article 27 para. 3 of the Convention.

III. Proceedings against the OEK

6. The applicant complains under Article 6 para. 1 of the Convention that he was required to pre-pay the court fees in his last action against the OEK. He also complains under the same provision of the length of the relevant proceedings.

In accordance, however, with Article 27 para. 1 (b) of the Convention the Commission 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.

The Commission recalls, in this connection, that these particular complaints of the applicant were already raised in his application No. 18989/91 which was declared inadmissible on 12 October 1994.

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

7. The applicant complains that the above-mentioned limitations of his right of access to a court, taken together with a series of human rights violations of which he has complained in his previous applications, have made it impossible for him to continue to exercise his profession and earn his living for the last eight years. He invokes, in this connection, Article 8 of the Convention.

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.

It follows that this part of the application must be rejected pursuant to Article 27 para. 2 of the Convention.

8. The applicant finally argues that by limiting his right of access to a court in the manner described above the Greek courts have deprived him of his claims against PNP, A.S. and OEK, which constitute possessions within the meaning of Article 1 of Protocol No. 1.

The Commission notes, however, that the above-mentioned claims of the applicant are still pending before the domestic courts.

In these circumstances, the Commission does not consider that the applicant has exhausted domestic remedies, as required under Article 26 of the Convention. This part of the application must be rejected, therefore, in accordance with Article 27 para. 3 of the Convention.

For these reasons, the Commission, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaints concerning the refusal of the domestic court to allow him to intervene in the proceedings instituted by the TEE on his behalf against the Children's Hospital of Penteli and the length of the same proceedings;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the First Chamber	Acting President of the First Chamber
(M.F. BUQUICCHIO)	(J. LIDDY)