AS TO THE ADMISSIBILITY OF

Application No. 19937/92
by Stamatios STAMATIADES
against Greece

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

MM. S. TRECHSEL, President
H. DANELIUS
G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

Mr. K. ROGGE, 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 29 November 1990 by Stamatios STAMATIADES against Greece and registered on 4 May 1992 under file No. 19937/92;

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 applicant is a Greek citizen, born in 1946 and a resident of Poros. He is a high school teacher by profession.

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

a. Facts relating to administrative proceedings regarding the manner in which he carried out his professional duties.

On 13 November 1987, by decision of the Piraeus Regional Council for Secondary Education, the applicant was suspended from his post in Galata high school. This decision was confirmed on 23 November 1987 by the Director of secondary education of the Piraeus Prefecture. On 19 February 1988, by decision of the Piraeus Regional Council of Directors of secondary education, the applicant was notified of his transfer, allegedly as a disciplinary measure, to Nikaia High School. This decision was confirmed on 28 March 1988 by the Piraeus Prefecture. On 6 May 1988 the Piraeus Regional Council of Directors of secondary education suspended his tenure and on 15 July 1988 decided to prolong his suspension, confirmed on 22 July 1988 by the Piraeus Prefecture. On 30 August 1988, by decision of the Regional Council of Directors of secondary education, the applicant was posted to Nikaia High School where he did not report for duty. As a result of this, on 17 October 1988, the Minister of Education served him with a

disciplinary note. On 18 May 1989 the Director of the Piraeus Prefecture brought the case before the disciplinary board of the Regional Council of Officers for secondary education. On 12 June 1991 the Minister of National Education issued a decree calling for the execution of the decision of 17 October 1988 concerning disciplinary measures against the applicant.

The disciplinary proceedings instituted against the applicant for his failure to report for duty at the Nikaia High School were terminated on 27 May 1993 when the Council of Directors of Secondary Education imposed on him the penalty of definite dismissal.

b. Facts relating to proceedings before the administrative courts.

On 6 December 1987 the applicant filed before the Council of State a plea of nullity against his suspension from duties of 13 November 1987. The Council of State, by judgment of 17 October 1989, found that it had no jurisdiction and decided to refer the case to the Administrative Court of Appeal of Piraeus.

On 6 April 1988 the applicant filed before the Council of State a plea of nullity against his transfer to Nikaia High School of 19 February 1988. The Council of State, by judgment of 10 January 1991, rejected the plea on the ground that the applicant had failed to pay the court fees.

On 29 December 1988 he filed a second plea of nullity before the Council of State against his transfer of 19 February 1988. The Council of State, by judgment of 10 April 1991, rejected the applicant's plea as inadmissible on the ground that it had been filed after the six months time-limit.

On 19 November 1990 and on 23 January 1991 the applicant submitted explanatory memorials before the Administrative Court of Appeal of Piraeus to which his plea of nullity of 6 December 1987 had been transmitted from the Council of State. The Administrative Court of Appeal, by judgment of 29 March 1991 accepted the plea of nullity and annulled the suspension of 13 November 1987.

On 9 December 1991 the applicant filed a plea of nullity with the Council of State against the transfer of 19 February 1988, the note of 17 October 1988 and the decree of the Minister of Education of 12 June 1991. The applicant submits that the court has not examined his case on the merits.

On 30 August 1991 the applicant filed a new plea of nullity with the Administrative Court of Appeal of Piraeus against the same acts.

On 5 September 1991 the applicant filed a plea for a stay of execution with the Administrative Court of Appeal of Piraeus against the transfer order of 19 February 1988 while his plea of nullity of 30 August 1991 was still pending. The Administrative Court of Appeal by its judgment of 26 September 1991 rejected the application on the ground that the applicant's pleas of nullity against the contested order had been rejected as inadmissible by the Council of State in its two judgments of 10 January and 10 April 1991.

On 20 July 1993 the applicant lodged an action for the annulment of the decision of 27 May 1993 of the Council of Directors of Secondary Education dismissing him from the civil service. On 27 August 1993 the applicant applied for the suspension of the enforcement of the same decision. His application was refused by the Administrative Court of Piraeus (No. 8/93).

c. Facts relating to the criminal proceedings.

On 13 June 1989 the applicant was arrested, allegedly with violence, by the police at the Galata High School premises for breach of the peace and was subsequently detained. On 2 October 1989 the three member first instance Criminal Court of Piraeus sentenced him to four months imprisonment (No. 6097) for disrupting public order. The applicant appealed against this judgment. On 30 June 1992 the three member Piraeus Criminal Court of Appeal reduced the applicant's sentence to 30 days imprisonment convertible into a fine.

On 1 September 1989 he was arrested and allegedly handcuffed by the police at Galata High School. On 20 November 1989 the three member first instance Criminal Court (No. 7232) sentenced the applicant to seven months imprisonment for disrupting public order because he had entered the premises of the High School. The applicant appealed against this judgment. On 15 June 1993 the three member Criminal Court of Appeal of Piraeus reduced the applicant's sentence to 40 days imprisonment convertible into a fine.

On 4 September 1989 the applicant was arrested again by the police at Galata High School. On 5 September 1989 the three member first instance Criminal Court of Piraeus (No. 5501) found that the applicant was not guilty of disrupting public order.

COMPLAINTS

1. The applicant complains that he was not granted the opportunity of having his witnesses heard with regard to the administrative acts which led to his dismissal. He invokes Article 6 para. 3 (d) of the Convention.

2. He complains that he was arrested and detained without being informed of the reasons for his arrest and the charges made against him. He also complains that he did not receive compensation after having being acquitted of the offence of breaching the peace. He invokes Article 5 paras. 2 and 5 of the Convention. He also alleges that during his arrest and detention he was subjected to inhuman and degrading treatment. He invokes Article 3 of the Convention.

3. He complains that he has been convicted for disrupting public order although he was not given any grounds for the charges against him. Furthermore he alleges that it was doubtful that his presence in the High School of Galata provoked any breach of the peace. He also complains that he was convicted of acts that he did not commit and which did not constitute criminal offences. He invokes Article 6 paras. 2 and 3 (a) and Article 7 of the Convention.

4. Moreover he complains about the length of the proceedings. He invokes Article 6 para. 1 of the Convention.

5. He alleges that his convictions were based on his political opinions and ideas about democracy. He invokes Article 9 of the Convention.

6. He complains that his criminal and disciplinary prosecutions have deprived him of his freedom of expression. He invokes Article 10 of the Convention.

7. He alleges that his dismissal and convictions were motivated by political considerations and therefore he has been discriminated against. He invokes Article 14 of the Convention.

9. He complains that he has not had access to an effective remedy. He invokes Article 13 of the Convention.

THE LAW

1. The applicant complains that he was not granted the opportunity of having his witnesses heard with regard to the administrative acts which led to his dismissal. He invokes Article 6 para. 3 (d) (Art. 6-3-d) of the Convention which reads as follows:

> "3. Everyone charged with a criminal offence has the following minimum rights:
>
> .....
>
> d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him".

The Commission notes that the applicant's complaint concerns disciplinary and administrative proceedings relating to his professional duties. The Commission recalls that disciplinary proceedings do not ordinarily concern a dispute over "civil rights and obligations" (see Eur. Court H.R., Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 19, para. 42) and that disciplinary proceedings cannot as such be characterised as "criminal" (see Eur. Court H.R., Engel judgment of 8 June 1976, Series A no. 22, pp. 33-36, paras. 80-85). There are not in the present case, according to the material submitted by the applicant through his application, any circumstances leading to the conclusion that a criminal charge was at issue.

It follows that this part of the application is incompatible ratione materiae with Article 6 (Art. 6) of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

2. The applicant complains that he was arrested and detained without being informed of the reasons for his arrest and the charges against him. He also complains that he did not receive compensation after having being acquitted of the offence of breach of the peace. He invokes Article 5 paras. 2 and 5 (Art. 5-2, 5-5) of the Convention which read as follows:

> "2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
> ....
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

He also alleges that during his arrest and detention the police subjected him to inhuman and degrading treatment. He invokes Article 3 (Art. 3) of the Convention which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Commission is not, however, called upon to decide whether these allegations disclose any appearance of a violation of the above provisions. Under Article 26 (Art. 26) of the Convention, "the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law".

The Commission notes that these complaints have not been raised before the criminal courts and that the applicant did not appeal in cassation. It follows that the condition as to the exhaustion of domestic remedies is not satisfied.

This part of the application must, therefore, be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

3. The applicant complains that he has been convicted of a breach of the peace although he was not informed of the grounds for the charges against him. Furthermore he alleges that his mere presence in the premises of Galata High School was not enough to constitute the offence of breach of the peace. He also complains that he was convicted for acts that he did not commit and which did not constitute criminal offences. He invokes Article 6 paras. 2 and 3 (a) (Art. 6-2, 6-3-a) of the Convention which read as follows:

> "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; . . . ."

The Commission notes that Article 6 (Art. 6) of the Convention is applicable to the criminal proceedings against the applicant.

The Commission is not, however, called upon to decide whether the facts alleged by the applicant disclose any appearance of a violation of that provision, as the applicant has failed to raise in substance this complaint before the criminal courts which convicted him of breach of the peace and as he did not lodge an appeal in cassation against the judgments of those courts. It follows that the applicant has not complied with the requirement as to the exhaustion of domestic remedies.

This part of the application must, therefore, be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

4. The Commission finds unsubstantiated the applicant's allegations that his convictions and dismissal were a result of his political opinions, deprived him of freedom of expression and were motivated by political considerations contrary to Articles 7, 9, 10, 13 and 14 (Art. 7, 9, 10, 13, 14) of the Convention.

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.

4. Finally, the applicant complains about the length of proceedings. He invokes Article 6 para. 1 (Art. 6-1) of the Convention which reads 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 . . ."

The Commission recalls that Article 6 (Art. 6) is not applicable to proceedings which do not relate to the determination of civil rights or criminal charges. It follows that the applicant's complaints about the length of the administrative procedures and the ensuing court proceedings are incompatible ratione materiae with Article 6 (Art. 6) of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

The Commission finds that Article 6 (Art. 6) of the Convention is applicable only to the applicant's complaint concerning the length of proceedings before the criminal courts. The Commission considers that it cannot, on the basis of the material before it, determine the admissibility of the complaint relating to the length of those proceedings and that it is therefore necessary, in accordance with Rule

48 para. 2 (b) of the Rules of Procedure, to communicate the applicant's complaint as regards the length of the criminal proceedings to the respondent Government.

For these reasons, the Commission, unanimously

DECIDES TO ADJOURN its examination of the complaint concerning the length of the proceedings before the criminal courts;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)