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 17 May 1995, the following members being present:

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

Ms. M.-T. SCHOEPFER, 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 reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 22 December 1994 and the observations in reply submitted by the applicant on 20 February 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Greek citizen, born in 1946 and a resident of Poros. In the proceedings before the Commission he is represented by Mr. L.-A. Sicilianos, a lawyer practising in Athens.

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

The applicant used to serve as a teacher in the high school of Poros until 30 August 1988 when he was transferred to another high school. The applicant questioned the legality of the administrative decision ordering his transfer by lodging two actions before the Council of State (Simvulio Epikratias), which were rejected on 10 January 1991 and 10 April 1991. His various attempts to enter the premises of the Poros high school led to the institution of two sets of criminal proceedings against him.

I. The first set of criminal proceedings

On 13 June 1989 the applicant was arrested by the police at the Galata high school. The Public Prosecutor charged him with the offence provided for under Article 334 para. 3 of the Criminal Code, ie illegally entering premises used by a public authority and disrupting its work. On 2 October 1989 the three-member First Instance Criminal Court (Trimeles Plimeliodikio) of Piraeus sentenced the applicant to four months imprisonment, which it immediately converted into a fine. The applicant appealed.

On 15 April 1992 the three-member Criminal Court of Appeal (Efetio Plimelimation) of Piraeus decided to adjourn the hearing of the applicant's appeal, because the principal prosecution witness could not attend for health reasons. On 30 June 1992 the Court of Appeal reduced the applicant's sentence to 30 days imprisonment, which it immediately converted into a fine.

II. The second set of criminal proceedings

On 1 September 1989 the applicant was arrested again by the police at the Galata high school and criminal proceedings were instituted against him for illegally entering premises used by a public authority and disrupting its work. On 20 November 1989 the three-member First Instance Criminal Court of Piraeus sentenced him to seven months imprisonment which it immediately converted into a fine. The applicant appealed.

On 26 October 1992 the three-member Criminal Court of Appeal of Piraeus decided to adjourn the hearing of the applicant's appeal, because the members of the Pireaus Bar were on strike. A further adjournment was ordered on 3 March 1993 for the same reason. On 15 June 1993 the Court of Appeal of Piraeus reduced the applicant's sentence to 40 days imprisonment, which it immediately converted into a fine.

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention of the length of the criminal proceedings against him.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 29 November 1990 and registered on 4 May 1992.

On 31 August 1994 the Commission invited the Government to submit written observations on the admissibility and merits of the applicant's complaints regarding the length of the criminal proceedings against him, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure. The Commission declared the remainder of the application inadmissible.

The Government's written observations were submitted on 22 December 1994, after an extension of the time-limit fixed for that purpose. The applicant replied on 20 February 1995.

THE LAW

The applicant complains of the length of the criminal proceedings against him. He invokes Article 6 para. 1 (Art. 6-1) of the Convention which reads as follows:

> "In the determination of ... any criminal charge against him everyone is entitled to a ... hearing within a reasonable time ..."

The Government submit that it does not appear from the application form and the documents submitted that the applicant has complained before the Commission of a violation of his right to a

hearing within a reasonable time in connection with the criminal proceedings in question. Alternatively, they argue that the complaints are manifestly ill-founded. As regards the first set of proceedings the Government submit that the period of three and a half months which elapsed between the institution of the proceedings and the first instance judgment was reasonable in length. The fact that the first hearing of the applicant's appeal was held two and a half years after the first instance judgment is attributed to the overburdening of the appeal courts. This results from the fact that Greek law does not impose any preconditions for the exercise of the right of appeal. The adjournment of the appeal hearing, which caused a further delay of two months, was necessary in the interests of a proper administration of justice as being intended to give the court the opportunity to hear the principal prosecution witness.

As regards the second set of proceedings the Government argue that there was no delay until the first instance judgment. They attribute the fact that almost three years elapsed between the first instance judgment and the first hearing on appeal to the overburdening of the courts of appeal. Finally, they consider that the two adjournments of the appeal hearing were justified in the interests of a proper administration of justice, as they were intended to safeguard the applicant's right to be represented by counsel.

The applicant argues that the cases against him were simple and that he was not responsible for any of the delays. On the contrary, the state authorities were responsible for a thirty-three months period of total inactivity at the appeal stage of the first set of proceedings. The applicant also attributes to the State authorities thirty-five months of total inactivity at the appeal stage of the second set of proceedings. He further argues that the State is responsible for the delays caused by the strike of the Piraeus Bar, to which it has allocated public powers. In his view, the State should in any event have taken measures to protect the accused's right to a fair trial within a reasonable time during the lawyers' strike.

The Commission notes that in his application form of 17 April 1992 the applicant did not complain of the length of the criminal proceedings against him. However, in his letter to the Commission of 3 December 1992, which was communicated to the Government, the applicant complained expressly of the courts' failure to respect his right to a hearing within a reasonable time in the determination of the criminal charges against him. In this connection the Commission recalls that, in accordance with the Court's case-law, when the institutions set up by the Convention review the circumstances complained of by an applicant, they have to take account not only of the original application but also of the additional documents intended to complete the latter (Eur. Court H.R., Foti judgment of 10 December 1982, Series A no. 56, p. 15, para. 44). The Commission also notes that the letter of 3 December 1992 was submitted less than six months after the first set of proceedings had been concluded and while the second set of proceedings was still pending. In the light of all the above the Commission considers that it has jurisdiction to examine in the context of the present application the applicant's complaint regarding the length of the criminal proceedings against him.

The Commission has proceeded to a preliminary examination of the other arguments submitted by the parties. The Commission considers it necessary to examine the merits of the application, no other ground for declaring it inadmissible having been established.

For these reasons, the Commission, unanimously,

DECLARES THE REMAINDER OF THE APPLICATION ADMISSIBLE.

Secretary to the Second Chamber President of the Second Chamber

(M.-T. SCHOEPFER) (H. DANELIUS)