AS TO THE ADMISSIBILITY OF

Application No. 34372/97
by Housein, Bedrie, Oznour, Fatme,
Aisel and Ilkai ZEIBEK
against Greece

The European Commission of Human Rights (First Chamber) sitting in private on 21 May 1997, the following members being present:

Mrs. J. LIDDY, President
MM. E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

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 25 October 1996 by Housein, Bedrie, Oznour, Fatme, Aisel and Ilkai ZEIBEK against Greece and registered on 8 January 1997 under file No. 34372/97;

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 first applicant was born in 1951 in Greece. He is married to the second applicant who was born in 1961 in Greece. The remaining four applicants are their children born in 1974, 1975, 1977 and 1982 in Greece. They are of Turkish ethnic origin. They reside in Ehinos, Xanthi, Greece and are all stateless and unemployed. In the proceedings before the Commissionrt. they are represented by Mr. O. Haciibram, a lawyer practising in Xanthi, and Mr. T. Akillioglu, a lawyer practising in Ankara.

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

a. Particular circumstances of the case

In January 1984 the applicants, who were at the time Greek

citizens, travelled from Greece to Istanbul to visit the father of the second applicant. While in Istanbul the first applicant lost his passport, which had been issued on 29 March 1983 by the Prefecture of Xanthi, and applied to the Greek Consulate for a travel document so that he could return to Greece. After a number of months, the Greek consular authorities announced to him that, by decision of the Minister of the Interior, he had lost his Greek nationality. He claims that no reasons were given to him. Neither was the decision served on him.

On 30 May 1985 the remaining applicants, who had Greek passports, returned to Greece. One month later they were joined by the first applicant who crossed the border illegally. They were then informed that the Minister of the Interior, by the above-mentioned decision, had revoked the Greek nationality of all applicants and not the first applicant only. The applicants tried repeatedly to have the decision repealed, but were unsuccessful.

On 2 June 1995 the first applicant was found guilty of driving a vehicle without a driving licence by the single-member first instance criminal court (monomeles plimmeliodikio) of Xanthi, which did not accept as an excuse the fact that the applicant could not apply for such a licence because of the particularity of his citizenship situation.

On 1 September 1995 the applicants lodged an application for judicial review (etisi akiroseos) with the Council of State (Simvulio Epikratias) against the decision of the Minister of Interior, by which they were deprived of their Greek nationality, claiming that they had never been officially served with a copy thereof. They submitted that the facts underlying the decision had not been correctly established, that the decision did not contain adequate reasons and that they had not been heard.

On 11 September 1996 the Council of State rejected their application. The Council noted that the impugned decision had been issued on 22 November 1984. The decision revoked the applicants' nationality under Article 19 of the Code of Citizenship, which provided that those of non-Greek stock (allogenis) may lose their citizenship if they leave Greece with no intention to return, and was based on a report of the police of Xanthi to the effect that the applicants had sold all their property on 30 December 1983 and had left Greece in January 1984. On 10 November 1990 the applicants had asked for their Greek citizenship to be restored. In the relevant application they had referred extensively to the impugned decision and its reasons. It transpired, therefore, that the applicants had on that date been aware of the decision and its reasons. However, they did not appeal to the Council of State before 1 September 1995. As a result, their appeal had to be rejected as out of time under Article 46 para. 1 of presidential decree No. 18/1989.

The applicants obtained a copy of the decision of the Council of State on 13 December 1996.

b. Relevant domestic law

Article 46 para. 1 of presidential decree No. 18/1989 provides the following in respect of time-limits for applications for judicial review to the Council of State:

> "Except as otherwise provided, an application for judicial review must be made within sixty days of the day following the date of notification of the impugned decision or the date of publication ..., or, otherwise of the day following the day on which the applicant acquired knowledge of the decision."

COMPLAINTS

1. The applicants complain that they were deprived of theirnationality by administrative decision without a hearing in breach of Article 6 of the Convention.

2. They also complain that, since they lost their nationality, they cannot work, travel, drive a car, vote, get married or be affiliated to a social security scheme. This constitutes a violation of a number of their rights under the Convention, notably the right to marry under Article 12 of the Convention and the right to return to one's own country under Article 3 of Protocol No. 4.

3. Finally, they complain under Article 14 of the Convention that they lost their nationality under a provision of the Code of Citizenship which concerns only Greek citizens who are not considered to be of Greek stock. They claim that this provision is systematically used by the Greek authorities to reduce the number of non-ethnic Greeks among Greek nationals.

THE LAW

1. The applicants complain that they were deprived of their Greek citizenship under a provision of the Code of Citizenship which concerns only Greek citizens who are not considered to be of Greek stock and are, as a result, subjected to considerable hardship .

The Commission recalls that the right to a nationality is not one of the rights and freedoms secured by the Convention (Beljoudi v. France, Comm. Report 6.9.90, para. 79, Series A no. 234, p. 46). However, differential treatment of a group of persons on the basis of race might be capable of constituting degrading treatment prohibited under (Art. 3) of the Convention (East African Asians v. United Kingdom, Comm. Report 14.12.73, para. 207, D.R. 78, p. 5)

However, the Commission does not consider it necessary to examine whether the applicants' complaints can give rise to an issue under (Art. 3) of the Convention. The Commission recalls that under (Art. 26) of the Convention it may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law. It also recalls that, according to its case-law, domestic remedies are not considered to have been exhausted where an appeal is not admitted because of a procedural mistake by the applicant (No. 10636/83, Dec. 1.7.85, D.R. 43, p. 171).

The Commission notes that on 1 September 1995 the applicants appealed against the decision depriving them of their Greek citizenship to the Council of State invoking a number of grounds under domestic law which, if successful, would have resulted in the quashing of the relevant decision. However, on 11 September 1996 the Council of State rejected their appeal as out of time, after having satisfied itself that the applicants were aware of the impugned decision and its reasons at the latest on 10 November 1990, when they lodged an application for their Greek citizenship to be restored. It follows that the reason for the rejection of the appeal was a procedural mistake committed by the applicants.

As a result, the Commission considers that the applicants have not complied with the requirements of Article 26 (Art. 26) of the Convention concerning exhaustion of domestic remedies. This part of the application must be, therefore, rejected in accordance with Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicants complain that they were deprived of their nationality by administrative decision without a hearing in breach of Article 6 (Art. 6) of the Convention.

The Commission recalls that Article 6 para. 1 (Art. 6-1) of the

Convention
guarantees the right to a fair hearing in the determination of one's civil rights and obligations or of any criminal charge against him. However, according to the Commission's case-law, proceedings concerning a person's nationality do not determine either civil rights and obligations or a criminal charge (No. 13325/87, Dec. 15.12.88, D.R. 59, p. 256; No. 17309/90, Dec. 30.8.94, unpublished).

It follows that Article 6 para. 1 (Art. 6-1) of the Convention does not apply. This part of the application must be, therefore, rejected under Article 27 para. 2 (Art. 27-2) of the Convention as incompatible ratione materiae with the provisions of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber