

PARTIAL

AS TO THE ADMISSIBILITY OF

Application No. 16598/90
by Nicholas PHILIS
against Greece

The European Commission of Human Rights sitting in private
on 11 December 1990, the following members being present:

MM. C.A. NØRGAARD, President

J.A. FROWEIN

S. TRECHSEL

F. ERMACORA

G. SPERDUTI

E. BUSUTTIL

G. JØRUNDSSON

A.S. GÖZÜBÜYÜK

A. WEITZEL

J.-C. SOYER

H. DANELIUS

Mrs. G. H. THUNE

Sir Basil HALL

MM. F. MARTINEZ RUIZ

C.L. ROZAKIS

Mrs. J. LIDDY

MM. L. LOUCAIDES

J.-C. GEUS

A.V. ALMEIDA RIBEIRO

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the
Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 6 April 1990
by Nicholas PHILIS against Greece and registered
on 16 May 1990 under file No. 16598/90;

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 facts of the case, as they appear from the applicant's
submissions, may be summarised as follows.

The applicant is a Greek citizen born in 1937 and residing in
Athens.

On 30 July 1985 the Agricultural Bank of Greece transferred to
the applicant's account in the National Bank of Greece an amount of
351,000 Dr representing a part of the fee for design projects
executed by the applicant. On 8 August 1985 the applicant issued
a cheque for 100,000 Dr payable to himself, which the National Bank
refused to pay, since the amount transferred to the applicant's
account was credited only on 14 August 1985. The bank informed the
Athens Prosecutor who charged the applicant for issue of a cheque
without funds.

The case was brought before the First Instance Court of Athens (Monomeles Plimmielodikeio). The hearing of the case was adjourned on two occasions, namely on 12 January 1986 and 19 December 1986, because of the absence of the representative of the bank. The court held a hearing on 16 January 1987 in the applicant's absence. It found the applicant guilty and sentenced him to 5 months' imprisonment and a fine of 50,000 Dr.

On 19 January 1987 the applicant appealed to the Criminal Court of Athens (Trimeles Plimmielodikeio).

A hearing was held on 18 April 1989. The court heard the applicant but rejected his request to examine witnesses against him. The court reduced the penalty to 20 days' imprisonment convertible to a fine of 19,440 Dr. The judgment was read in open court in the applicant's presence on the same date.

On 5 May 1989 the applicant appealed to the Court of Cassation (Areios Pagos). At the hearing held before that court on 13 February 1990 the applicant presented his case himself, although Article 513 para. 3 of the Code of Criminal Procedure provides that at the hearing before that court the parties must be represented by a lawyer. The applicant invoked Article 6 para. 3 (c) of the Convention, submitting that according to this provision he had the right to defend himself in person.

On 13 March 1990 the Court of Cassation gave its judgment by which the applicant's appeal was declared inadmissible because the applicant was not duly represented before that court.

COMPLAINTS

1. The applicant complains that he was not allowed to represent himself before the Court of Cassation. He invokes Article 6 para. 3 (c) of the Convention, taken alone and in conjunction with Articles 13, 14 and 17 of the Convention.

2. Furthermore, the applicant complains that his right to a fair trial by an impartial tribunal has been infringed in the context of the proceedings before the Court of Cassation. He submits that this court should have adjourned the examination of the merits of his appeal in order to give him the opportunity to be duly represented. He also complains that the judgment of the Court of Cassation contains no reference to his memoranda or to the proposals made by the judge-rapporteur. He finally complains that the president of this court had previously dealt with civil appeals concerning his cases. He invokes Article 6 para. 1 of the Convention.

Moreover, the applicant complains of being convicted, although he was not proved guilty according to the law. He complains that the courts dealing with the criminal charges against him did not examine any witnesses against him. He invokes Article 6 paras. 1, 2 and 3 (d) of the Convention, taken alone and in conjunction with Articles 13, 14 and 17 of the Convention.

He also complains that the courts refused to examine whether the retention by the bank of the money transferred to his account was justified. He invokes Article 1 of Protocol No. 1 to the Convention taken alone and in conjunction with Articles 13 and 14 of the Convention.

3. Furthermore, the applicant complains that the proceedings concerned were unreasonably lengthy. He invokes Article 6 para. 1 of the Convention.

4. Finally, the applicant complains that he has been a victim of

systematic violations of his rights amounting to an unjustified interference with his right to respect for private life. He invokes Article 8 of the Convention.

THE LAW

1. The applicant complains that he was not allowed to represent himself before the Court of Cassation. He invokes Article 6 para. 3 (c) (Art. 6-3-c) of the Convention, taken alone and in conjunction with Articles 13, 14 and 17 (Art. 6-3-c + 13, 14, 17) of the Convention.

The Commission recalls that Article 6 (Art. 6) of the Convention does not as such guarantee a right to appeal but if a right to appeal is provided under domestic law, the requirements of Article 6 (Art. 6) must be respected in the appeal proceedings. However, Article 6 (Art. 6) does not exclude that access to the final instance in the domestic legal system, such as to a Court of Cassation, be regulated. The Commission recalls in particular that a requirement to be represented by a lawyer in proceedings before a higher court is not incompatible with Article 6 (Art. 6) of the Convention (cf. e.g. No. 727/60, Dec. 5.8.60, Yearbook 3 p. 302; No. 6878/75, Dec. 6.10.76, D.R. 6 p. 79 at p.98). The Commission further notes that Article 6 para. 3 (c) (Art. 6-3-c) does not give the accused the right to decide himself the manner in which his defence should be assured. The decision as to which of the two alternatives mentioned in this provision should be chosen depends upon the applicable legislation or rules of the court (cf. No. 5923/72, Dec. 30.5.75, D.R. 3 p. 43).

In the present case the applicant appeared in person before the Court of Cassation and this court declared his appeal inadmissible as he was not represented by a lawyer. The applicant has not alleged either before the Court of Cassation or before the Commission that he did not have sufficient means to pay for legal assistance.

Having regard to its considerations above, the Commission finds no indication of a violation of Article 6 (Art. 6) of the Convention or of the other Convention provisions invoked by the applicant.

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.

2. The applicant also complains of the proceedings against him. He invokes Articles 6 (Art. 6), 13 (Art. 13), 14 (Art. 14) and 17 (Art. 17) of the Convention and Article 1 of Protocol No. 1 (P1-1).

As regards the proceedings before the Court of Cassation, the applicant submits that this court, after having found that he was not duly represented, should have adjourned the case in order to permit him to comply with the representation requirements. He also complains that the judgment of this court does not mention his memoranda or the proposals by the judge-rapporteur and that the president of the court cannot be regarded as an impartial judge.

The Commission notes that the applicant did not request that the case be adjourned in order to give him the opportunity to be duly represented. It finds that in these circumstances the applicant cannot complain of the non-adjournment of the case. The Commission finds, in particular, that domestic courts have no obligation under Article 6 (Art. 6) of the Convention to adjourn ex officio the examination of a case in order to give a party in the proceedings further opportunities to comply with the procedural requirements of domestic law.

The Commission also finds that neither the lack of reference to the applicant's memoranda and to the proposals by the judge-rapporteur in the judgment of the Court of Cassation nor the fact that the president of this court had previously dealt with civil cases concerning the applicant affected in any way whatsoever the latter's rights under Article 6 para. 1 (Art. 6-1) of the Convention in the proceedings concerned.

Therefore, the Commission finds no indication of a violation of Article 6 (Art. 6) of the Convention with regard to the complaints concerned.

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.

Insofar as these applicant's complaints concern the proceedings before the First Instance Court of Athens and the Criminal Court of Athens, the Commission recalls that under Article 26 (Art. 26) of the Convention it may only deal with a matter after all domestic remedies have been exhausted according to the general principles of international law. It also recalls that there is no exhaustion when a domestic appeal is not admitted because of a procedural mistake (cf. above-mentioned No. 6878/75). In the present case the applicant's appeal to the Court of Cassation was declared inadmissible because the applicant was not duly represented in the proceedings before that court.

It follows that the applicant has not complied with the conditions as to the exhaustion of domestic remedies and that this part of the application must be rejected in accordance with Article 27 para. 3 (Art. 27-3) of the Convention.

3. The applicant further complains of the length of the proceedings. He invokes Article 6 para. 1 (Art. 6-1) of the Convention, which provides insofar as relevant:

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

The Commission considers that it cannot decide on the admissibility of this complaint without first having obtained the observations of the parties. Consequently, the examination of this part of the application must be adjourned.

4. Finally, the applicant alleges that his right to respect for private life has been infringed and invokes Article 8 (Art. 8) of the Convention.

The Commission however finds that the examination of the application does not disclose any appearance of a violation of the right invoked.

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.

For these reasons, the Commission, unanimously

DECIDES TO ADJOURN the examination of the complaint concerning the length of the proceedings;

DECLARES INADMISSIBLE the remainder of the application.

(H. C. KRÜGER)

(C. A. NØRGAARD)