CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF TENGERAKIS v. CYPRUS

(Application no. 35698/03)

JUDGMENT

STRASBOURG

9 November 2006

FINAL

09/02/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tengerakis v. Cyprus,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President,*
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges,*

and Mr S. NIELSEN, *Section Regitrar*,

Having deliberated in private on 19 October 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 35698/03) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Cypriot national, Mr Byron Tengerakis ("the applicant"), on 20 October 2003.

2. The Cypriot Government ("the Government") were represented by their Agent, Mr P. Clerides, Attorney-General of the Republic of Cyprus.

3. On 21 October 2005 the Court decided to communicate the complaint concerning the length of the proceedings. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1930 and lives in Cuxhaven, in Germany.

5. The applicant is a shareholder of M.T.V Cosmetics Ltd, a company registered under Cypriot law. From 29 January 1992 onwards he has been involved in a number of civil proceedings concerning the above company.

6. The facts of the case, as submitted by the parties and as derived from the minutes of the proceedings, may be summarised as follows.

A. Civil application no. 24/92

7. On 29 January 1992 the applicant filed application no. 24/92 before the District Court of Nicosia complaining about the oppressive conduct of the majority shareholders of M.T.V. Cosmetics Ltd and requesting a number of remedies in this respect.

8. On 23 December 1992 the court delivered its judgment finding that there had been oppressive conduct and ordering the purchase of the applicant's shares by the majority shareholders at a price determined by an independent valuer. No appeal was filed against this judgment.

9. Subsequently, on 26 November 1993 the majority shareholders of the company filed an application (also referred to as application no. 24/92) with the District Court of Nicosia requesting it to issue an order requiring, *inter alia*, the applicant to transfer his shares to the majority shareholders and to comply with the court's judgment of 23 December 1992.

10. Following the filing of an *ex-parte* application by the majority shareholders, the court issued interlocutory orders prohibiting the applicant from, *inter alia,* transferring and/or alienating his shares pending the proceedings for the execution of the court's judgment of 23 December 1992.

11. Subsequent to an objection put forward by the applicant, the court set aside the interlocutory orders on 28 January 1994.

12. On 28 September 1994 the court delivered its judgment dismissing the application of 26 November 1993. It found that the application had no legal basis.

13. On 10 October 1994 the defendants filed an appeal no. 9296 with the Supreme Court. A cross-appeal was lodged by the applicant on 10 October 1997. Both the appeal and the cross-appeal were withdrawn on 22 January 1999.

B. Civil action no. 1056/94

1. Proceedings before the District Court of Nicosia

14. On 3 February 1994 the majority shareholders (plaintiffs) of M.T.V Cosmetics Ltd filed civil action no. 1056/94 against the applicant before the District Court of Nicosia requesting, in essence, the enforcement of the court's judgment dated 23 December 1992 in application 24/92 (see paragraph 8 above). They requested a number of remedies in this respect.

15. On the same date the plaintiffs also filed an *ex parte* application requesting an interlocutory court order prohibiting the applicant from, *inter alia*, transferring or alienating his shares pending the proceedings and from interfering with the company's affairs. This application was eventually withdrawn on 11 February 1994.

16. The statement of claim was filed on 11 November 1994 and on 5 December 1994 the plaintiffs filed an application concerning the applicant's failure to submit his statement of defence and counterclaim. The application was set for hearing for 12 December 1994. The hearing was then adjourned twice, for two months in total, at the applicant's request for the purposes of filing his statement of defence. On 16 February 1995 the applicant filed his statement of defence and counterclaim and on 24 February 1995 the plaintiffs withdrew their application of 5 December 1994. The reply to the defence and counterclaim were filed on 9 March 1995. On 26 May 1995 the case was set for hearing for 12 December 1995, six months and seventeen days later.

17. In the meantime, an application was filed by the applicant on 28 November 1995 concerning a preliminary objection. The application was fixed for hearing on 9 February 1996. The applicant then withdrew part of the objection and the application was set for hearing for 10 April 1996. On that date the hearing of the application was adjourned until 17 June 1996 at the plaintiffs' request. On that date the hearing was adjourned by the court itself until 4 November 1996 and then, on the latter date, until 15 January 1997, following the retirement of the President of the court. An interlocutory decision was delivered on 31 January 1997 dismissing the preliminary objection.

18. The hearing of the case began on 11 April 1997 and was concluded on 29 March 1999. Approximately twenty hearing sessions were held. Furthermore, within this period about ten interlocutory applications were examined by the court. The applicant filed nine of these applications on: 18 June 1997 (*ex parte* application for discovery of documents), 1 July 1997 (application concerning the inspection of documents), 10 July 1997 (*ex parte* application concerning the taking of evidence in Germany), 5 September 1997 (application requesting access to the company's bank accounts), 25 February 1998 (application concerning the summons of witnesses), 31 July 1998 (application by summons for the quashing/setting aside of a previous order issued by the court), 20 August 1998 (application by summons requesting the suspension of the proceedings pending determination of appeal no. 9296 - see paragraph 13 above), 27 November 1998 (two applications, one for the taking evidence of abroad and one for the discovery of documents). It appears from the minutes of the proceedings that at least two of the above applications were withdrawn by the applicant. The plaintiffs filed one interlocutory application within this period, on 30 September 1997, for the amendment of their statement of claim. The court issued nine interlocutory decisions and/or orders in respect of the above applications and the plaintiffs filed an application before the Supreme Court for leave to apply for an order of certiorari in order to quash/set aside one of the above interlocutory decisions. This application was dismissed by the Supreme Court.

19. Furthermore, on three separate occasions between 3 July 1998 and 3 December 1998, the court expressed its concern in respect of the length of the proceedings in the case.

20. On 27 May 1999 the District Court dismissed the action and held that the judgment of 23 December 1992 was unenforceable and did not create legal effects for the parties involved. It observed that the latter judgment was incomplete, since it had left the material issue of the value of the applicant's shares unspecified and had referred the whole issue to an independent valuer who had to assess the price of the shares as if there had not been oppression. The independent valuer's decision could not complete the court's decision since he could not perform judicial functions. Furthermore, the applicant had not been ordered to do anything. It was the defendants in that case who had been ordered to buy the shares.

21. As regards the length of the proceedings the court observed in its judgment that the hearing of the case had commenced in April 1997 and it was completed in a period of two years. It found that the delay was due to the number of interlocutory applications submitted by the parties, including an application for the amendment of the pleadings in the middle of the hearing of the case and, also, due to the extensive evidence put forward by the parties, including thirty-two exhibits and statements from eleven witnesses. Furthermore, the trial judge noted that his transfer in October 1997 had hindered the progress and completion of the proceedings. Finally, the trial judge considered that the fact that the applicant had not been represented by a lawyer for a great part of the proceedings contributed to the delay.

22. On 6 November 2000 the court awarded the applicant the amount of 14,998.45 Cyprus pounds (CYP) for legal costs plus interest.

2. Appeal proceedings before the Supreme Court

23. On 22 June 1999 the plaintiffs lodged appeal no. 10571 with the Supreme Court against the first instance judgment of 27 May 1999 and on 22 December 2000 they lodged appeal no. 11002 challenging the award of costs.

24. On 12 July 1999 the Registrar of the District Court of Nicosia sent the appeal notice to the Chief Registrar of the Supreme Court informing the latter that the court minutes would be sent to the Supreme Court in eight months.

25. On 5 May 2000 the Chief Registrar of the Supreme Court sent a letter to the Registrar of the District Court of Nicosia requesting that the minutes of the case be sent to the Supreme Court. From 13 July 2000 until 12 June 2001 about eight letters/reminders were sent by the Chief Registrar of the Supreme Court to the District Court in this respect.

26. In the meantime, it appears that the District Court of Nicosia suspended the execution of its judgment of 27 May 1999 pending the

determination of appeal no. 10571, following an application by the plaintiffs seeking a court order in this respect.

27. On 12 December 2001 the minutes of the first instance proceedings were sent to the Supreme Court and the appeals were fixed for pre-trial directions for 28 January 2002. On that date the appellants' lawyer asked for time for the purpose, *inter alia*, to make amendments to the grounds of appeal. The appeal was then fixed for 20 March 2002 for pre-trial directions.

28. On 19 April 2002 the court directed the appellants to file their amended appeal until 3 May 2002 and their written addresses by 17 June 2002. The appellants filed their amended appeal within the deadline but on 17 June 2002 they filed an application requesting an extension of sixty days for the filing of the outline of their addresses. The court examined this application on 25 June 2002 and granted an extension of three weeks to the appellants. On 10 July 2002 and on 13 September 2002 the appellants filed an application for an extension of time for the filing of the outline in their addresses in appeals no. 11002 and no. 10571 respectively. On 19 September 2002 the court examined the above applications and directed that the outlines of the addresses in both appeals should be filed within thirty days. These were filed by the appellants on 17 October 2002.

29. On 3 December 2002 the applicant filed an application for an extension of seven days for filing the outline of his address. This was granted by the court on 19 December 2002 and the applicant filed the outline on 23 December 2002.

30. On 21 April 2003 the Supreme Court dismissed both appeals with costs against the appellants.

31. On 17 July 2003 the applicant filed his list of costs and expenses. This included legal costs at CYP 2,441.70, expenses for the list of costs at CYP 317.46 and expenses incurred due to the fact that he had been permanently residing in Germany at CYP 4,203.15. On 4 November 2003 the Registrar awarded the applicant the amount of CYP 1,940.30 for the first two claims but rejected his latter claim.

32. The applicant then lodged an appeal (no. 10571) before the Supreme Court requesting the review of the assessment of his costs by the registry. He claimed that his travel expenses to Cyprus and his living expenses therein for the duration of the proceedings should have been reimbursed since at the relevant time he had been permanently residing in Germany.

33. On 15 June 2005, the Supreme Court dismissed the applicant's appeal. It found that he had failed to establish that he had been a permanent resident of Germany during the material time.

C. Civil application no. 132/00

34. On 14 March 2000 the applicant filed application no.132/00 before the District Court of Nicosia against M.T.V Cosmetics Ltd requesting a number of remedies concerning the formation and activities of the company.

35. On 12 October 2001 the trial judge issued a decision exempting himself from the proceedings following an objection by the respondent company on 27 September 2001. The case was then put before another judge.

36. Furthermore, between 5 May 2000 and 17 January 2006, the court dealt with twenty-eight interlocutory applications which were filed by the parties and objections thereto. Eleven of these applications were filed by the applicant and seventeen by the respondents.

37. In particular the applicant filed: an *ex parte* application on 21 December 2000 which was dismissed on 16 January 2001; an application on 19 January 2001 for an interim order which he withdrew on 14 June 2001; an *ex parte* application on 14 March 2001 which was approved on 20 March 2001; an *ex parte* application on 25 October 2001; an application on 18 April 2002 which was rejected on 14 May 2002 at the applicant's request; an application on 23 April 2002 which he withdrew on 30 April 2002; two *ex parte* applications on 13 and 14 May 2002 concerning the addition of other respondents to the main application approved on 6 June 2002 and 23 May 2002 respectively; an application on 23 April 2003 concerning the suspension of the execution of the order of costs which was dismissed by interim decision of 19 February 2004; an *ex parte* application on 3 June 2003; and, finally, an application on 15 October 2004 for an amendment which he withdrew on 22 September 2005.

38. The respondents filed two applications on 5 May 2000 and 4 July 2000 for an extension of time for the purpose of filing their observations; three *ex parte* applications on 23 January 2001, 27 February 2001 and 26 March 2001 requiring the presence of applicant in court for cross-examination purposes on 1 February 2001, 9 March 2001 and 21 May 2001 respectively; an application on 10 September 2001; an application on 27 March 2002 which was partially dismissed by interim decision of 6 August 2002; an application on 18 April 2002; an application on 16 May 2002; an application on 24 March 2003 which was withdrawn on 18 April 2003; an application on 5 September 2003; an application on 9 September 2003 (for the annulment of a previous court order) which was dismissed by interim decision on 19 February 2004; an application on 3 October 2003 requiring the presence of applicant in court for cross-examination purposes; two applications on 7 April 2004 and 29 April 2004 for an extension of time for the purposes of filing an objection to one of the applicant's applications which were granted on 21 April 2004 and 4 May 2004 respectively; an *ex parte* application on 10 September 2004 requesting leave

to cross examine the applicant which was approved on 27 September 2004; and finally, an application on 17 January 2006.

39. The last interlocutory application was set for directions for 21 February 2006 to allow time to the applicant to file an objection thereto if he so wished. It was then fixed for hearing for 28 March 2006. On that date the hearing did not take place in view of the parties' delayed appearance in court. The court then fixed the hearing of the application for 6 April 2006.

D. Civil action no. 3740/01

40. On 11 April 2001 one of the majority shareholders filed civil action 3740/01 before the District Court of Nicosia against M.T.V Cosmetics Ltd, two of the shareholders of the above company and another two companies, seeking a number of remedies, including the restitution of certain of the company's assets which were allegedly fraudulently misappropriated by the above defendants.

41. On 21 May 2002 the applicant filed an *ex parte* application before the court requesting that he be added as a second plaintiff to the above action.

42. By court order of 29 May 2002 the applicant was added as the second plaintiff to the action.

43. On 17 June 2002 the applicant applied for an extension of time for filing his statement of claim until 20 June 2002. The court approved the application and issued an order in this respect. Furthermore, the first plaintiff and the applicant (second plaintiff) filed their statements of claim on 20 and 21 June 2002 respectively.

44. From the latter date until 19 February 2004 the court dealt with six interlocutory applications by the parties: two were filed by the first plaintiff, one by the applicant and the rest by the defendants in the action.

45. On 8 July 2002 the first plaintiff filed an interlocutory application for the issuing of a judgment in accordance with the statement of claim. The application was fixed for 8 October 2002 and adjourned at the parties' request until 6 November 2002. It was then withdrawn on 4 December 2002.

46. On 27 March 2002 the defendants applied for dismissal of the action. They subsequently withdrew the application on 21 June 2002.

47. On 16 December 2002 the first plaintiff also filed an *ex parte* application for the discovery of documents which was approved on 20 December 2002.

48. On 11 September 2002 the defendants filed an application requesting that the court set aside its order 29 May 2002. The application was fixed for 8 October 2002. On that date an extension was given to the applicant until 6 November 2002 for filing his objection. The application was set for

hearing for 11 December 2002 and then adjourned by the court until 10 January 2003. It was then fixed for programming for 6 February 2003 and then 11 March 2003 and set for hearing for 31 March 2003. It was then fixed for directions for 7 April 2003 following a request for some time by the applicant. On that date the applicant filed an application asking for leave to amend his objection to the application. His request was approved and the case was fixed for directions for 5 May 2003. The hearing of the application was held on 2 June 2003. The decision was reserved on 2 June 2003 and the application was rejected by decision of the court on 15 January 2004.

49. In the meantime, on 3 October 2003, the defendants lodged an interlocutory application. The application was fixed for 4 December 2003 and then for 15 January 2004 following the applicant's request for time in order to file a written objection to the application. The application was approved by the court on 19 February 2004.

50. On 26 May 2004 an application was lodged requesting that the action be fixed. On 1 June 2004 the court fixed the case for directions for 6 July 2004. The case then appears to have been adjourned twice for direction purposes until 22 September 2004.

51. From the above date until 31 January 2005 the case was adjourned three times, twice at the defendants' request and one at the applicant's request for the purpose, *inter alia*, of filing their defence.

52. The pleadings were completed by 31 January 2005 and on 1 February 2005 an application was filed with the Registrar requesting that the case be fixed for mention. On 7 March 2005 the case was fixed for mention for 12 April 2005 and then 23 May 2005 in view of a question raised by the defendants concerning the statements of claim submitted by the plaintiffs. The case was then adjourned twice until 17 October 2005 pending the determination of an issue concerning the discovery of certain documents and the parties' handling of the case. On 17 October 2005 the case was set for hearing for 1 March 2006.

II. RELEVANT DOMESTIC LAW

53. The Legal Aid Law of 2002 (no. 165 (I), provides in so far as relevant, as follows:

> "3. Legal aid free of expense shall be granted to the proceedings provided in sections 4, 5 and 6 below, to the extent and under the conditions laid down therein.
>
> 4.- (1) This section applies-
>
> (a) In criminal proceedings before a court, against any person, for an offence that he may have committed in violation of any legislative provision, for which an imprisonment sentence is provided for exceeding one year and includes preliminary interrogation and every other stage of interrogation or other procedure taking place before the commencement of subsequent criminal proceedings that relate to it;

(b) Except for criminal proceedings provided in paragraph (b) of subsection (1) of section 5 below, in any other proceedings before a court exercising its criminal jurisdiction.

(2) For the purposes of the application of this section, the term "court" means the District Court, Assize Court, Military Court and includes the Supreme Court, when examining any issue raised in criminal proceedings, in exercising its first or second instance jurisdiction.

(3) In proceedings provided for in subsection (1) above, legal aid free of expense will be granted that would include advice, assistance and representation.

5. (1) For the purposes of application of this section, the term "proceedings for determined violations of human rights" means any:

(a) Civil proceedings before a court, at any stage, lodged against the Republic for damages sustained by a person due to determined violations of human rights; or

(b) Criminal proceedings lodged by any person, where the offence in examination concerns determined violations of human rights.

(2) Legal aid will be granted, free of expense, to proceedings concerning determined violations of human rights.

(3) Legal aid granted by virtue of this section:

(a) In the case of a civil proceedings lodged in the Republic or criminal proceedings, will include advice, assistance and representation; and

(b) In civil proceedings lodged outside the Republic, will include only advice.

(4) The Ministerial Council may by an order published in the Official Gazette of the Republic amend the Table.

6. (1) For the purposes of this section, the term "proceedings before a family court" means:

(a) Proceedings raised in respect to family relations on the basis of provision of bilateral or multilateral treaties to which the Republic has acceded; or

(b) Proceedings concerning parental care, alimony, recognition of child, adoption, proprietary relations of spouses and any other marital or family dispute.

(2) Free legal aid is provided for proceedings before a family court, which includes advice, assistance and representation."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE LENGTH OF THE PROCEEDINGS

54. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal..."

In this respect the applicant argued that all the proceedings concerned the same issue and thus, were sufficiently linked to amount to one set of proceedings.

55. The Government contested the applicant's arguments.

A. Admissibility

56. At the outset, the Court notes that, although the four sets of proceedings all involved the plaintiff and related to the company M.T.V Cosmetics Ltd, they constituted separate proceedings with a different cause of action and were examined separately by the domestic courts. Accordingly, it cannot accept the applicant's argument in this respect and will proceed to examine each set of proceedings individually.

I. Civil application no. 24/92

57. The Court observes that the proceedings concerning application no. 24/92 ended on 22 January 1999 with the withdrawal of the appeal and the cross-appeal pending before the Supreme Court (see paragraph 13 above).

It follows that this part of the application is inadmissible for non-compliance with the six months' rule set out in Article 35 § 1 of the Convention, and that it must be rejected pursuant to Article 35 § 4.

2. Civil action no. 1056/94, civil application no. 132/00 and civil action no. 3740/01

58. The period to be taken into consideration in civil action no. 1056/94 began on 3 February 1994 when the action was filed before the District Court of Nicosia and ended on 15 June 2005 with the Supreme Court's dismissal of the applicants' appeal concerning the assessment of his costs (*Beer v. Austria*, no. 30428/96, §§ 12-13, 6 February 2001 and *Robins v. the United Kingdom*, judgment of 23 September 1997, *Reports of Judgments*

and Decisions 1997-V, p. 1809, § 28). It thus lasted eleven years, four months and thirteen days for three instances over two levels of jurisdiction.

59. The period to be taken into consideration in civil application no. 132/00 began on 14 March 2000 when the application was filed before the District Court of Nicosia. According to the last information received by the Court on 15 September 2006, the proceedings were still pending on that date. They have thus already lasted approximately six years and six months for one level of jurisdiction.

60. Finally, the period to be taken into consideration with regard to civil appeal no. 3740/01 began on 29 May 2002 when the applicant was added as a second plaintiff to those proceedings. According to the last information received by the Court on 15 September 2006, the proceedings were still pending on that date. They have thus already lasted four years, three months and eighteen days for one level of jurisdiction.

61. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

62. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

1. Civil action no. 1056/94

63. The Court firstly observes that although the case does not appear to have been particularly complex factually and legally, the large number of interlocutory applications filed by the parties before the District Court of Nicosia increased the complexity of the case at least from a procedural standpoint. The District Court in its judgment of 27 May 1999 noted that the number of interlocutory applications had been one of the causes of the protracted length of the proceedings (see paragraph 21 above). In this connection, the Court notes in particular that the applicant had filed all but one of these applications. Furthermore, extensive evidence had been submitted by the parties in the proceedings both in the form of exhibits and witness statements (see paragraph 21 above).

64. However, the Court considers that the delays occasioned by the procedural complexity of the case and the applicant's role in this respect do not of themselves justify the length of the proceedings on the whole. In particular, it notes that before the District Court of Nicosia there were at

least two long periods of inactivity attributable to the respondent Government: a period of six months and seventeen days when on 26 May 1995 the court set the case for hearing for 12 December 1995 and then, a period of nearly seven months following two consecutive adjournments by the court itself from 17 June 1996 until 15 January 1997 (see paragraphs 16 and 17 above). Furthermore, although the appeal before the Supreme Court was lodged on 22 June 1999, the minutes of the first instance proceedings were sent to the Supreme Court on 12 December 2001. This was despite nine letters and/or reminders which were sent to the Registrar of the District Court by the Registrar of the Supreme Court for this purpose. This delay has not been explained. As a result there was a significant period of inertia following the lodging of the appeal amounting to two years, five months and twenty-two days following (see paragraphs 24 and 25 above). This in itself presents a substantial delay in the proceedings (see also in this regard the case of *Waldner v. Cyprus*, no. 38775/02, § 42, 19 January 2006). In this respect the Court recalls that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their judicial system in such a way that their courts can meet each of its requirements (see, among many other authorities, *Frydlender,* cited above, § 45, and *Massa v. Italy,* judgment of 24 August 1993, Series A no. 265-B, § 31).

65. The Court finds, having regard to all the circumstances of the case and having taken into account the overall duration of the proceedings, that in the instant case the length of the proceedings before the domestic courts was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

2. Civil application no. 132/00

66. The Court notes that the proceedings have been pending before the District Court of Nicosia for approximately six years and six months and that throughout this period the substance of the application has not yet been examined. Instead, it is clear from the facts of the case that, during this period, the court had been dealing with the numerous interlocutory applications filed by the parties. The Court notes that eleven of the twenty-eight applications were filed by the applicant (see paragraphs 36 and 37 above). The delay in the examination of the main application before the District Court of Nicosia was the consequence of these numerous interlocutory applications which increased the complexity of the case at least from a procedural point of view. Although admittedly the parties were only using the procedural possibilities open to them in the proceedings, it is clear that the incessant use of these possibilities significantly prolonged the trial before the District Court.

67. In conclusion, even though a period of more than six years on one level of jurisdiction for civil proceedings that are still pending may, on the face of it, seem unreasonable, the particular circumstances of the case and,

more specifically, its exceptional procedural complexity due to the numerous interlocutory applications filed by the parties (see paragraphs 36-38 above), lead the Court to find that the relevant authorities were not actually responsible for the length of the proceedings (see, *mutatis mutandis*, *Ciricosta et Viola v. Italy*, judgment of 4 December 1995, Series A no. 337-A, pp. 10-11, §§ 28-32; *Monnet v. France*, judgment of 27 October 1993, Series A no. 273-A, p. 12, §§ 28-34 and *Vandi v. Italy* (dec.), no. 46511/99, 26 September 2002).

For this reason it concludes that there has been no breach of Article 6 § 1 of the Convention.

68. Notwithstanding, the Court points out that in view of the fact that the above proceedings are still pending it would be open to the applicant in the future to re-submit a complaint to the Court if he still considered himself a victim of an alleged violation of Article 6 § 1 with regard to the length of the proceedings as a whole (see for example, *Tonino Rizio v. Italy*, no. 26723/95, Commission decision of 7 March 1996 and *Rizio v. Italy*, no. 49357/99, 25 October 2001; see also *mutatis mutandis*, *Apicella v. Italy* [GC], no. 64890/01, 29 March 2006).

3. Civil action no. 3740/01

69. The Court observes first of all that the proceedings have been pending before the District Court of Nicosia for just over four years and three months. It appears from the parties' submissions that the substance of the action has not yet been examined but that the court has been dealing with the interlocutory applications filed by the parties. The applicant filed only one of these interlocutory applications. Furthermore, although certain adjournments were granted at the applicant's request they were limited and of short duration. It does not therefore appear that the applicant's conduct significantly contributed to the prolongation of the trial.

70. As to the conduct of the authorities, the Court observes that delay occurred in the examination of the defendants' interlocutory application of 11 September 2002. In particular, although the District Court reserved its decision on 2 June 2003, this decision was delivered on 15 January 2004, that is, approximately seven and a half months later (see paragraph 48 above). The Court points out, however, that in the meantime the District Court continued with the examination of another interlocutory application in the same case (see paragraph 49 above). On 17 October 2005 the court set the action for hearing for 1 March 2006, four months and thirteen days afterwards (see paragraph 52 above). This period however would seem acceptable if viewed in the context of the total duration of the proceedings, as it must be (see, *mutatis mutandis*, *Andreucci v. Italy,* judgment of 27 February 1992, Series A no. 228-G, p. 76, §§ 15-18, and *Arena v. Italy,* judgment of 27 February 1992, Series A no. 228-H, p. 85, §§ 15-18). Otherwise, the Court notes that from the material submitted by the parties

no significant periods of inactivity can be identified that can be attributed to the relevant authorities.

71. Regard being had to all the circumstances of the case, the Court finds that the delays in the proceedings were not so substantial as to amount to a breach Article 6 § 1 of the Convention. The Court refers to paragraph 68 above in this respect.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE FAIRNESS OF THE PROCEEDINGS

72. The applicant invoked several complaints under Article 6 § 1 of the Convention. He firstly complained that the proceedings before the Cypriot Courts had not provided him with a remedy despite the fact that the judgments that had been delivered had been in his favour. In particular and in this regard, he argued that the judgment of the District Court of Nicosia of 23 December 1993 in civil application no. 24/92 had been incomplete, did not provide any remedy in respect of his claims, resulted in proceedings against him by the majority shareholders and prevented him from seeking remedies in respect of the continuing oppression. The applicant further complained that he had not been compensated in full for costs in respect of legal consultations, travelling and living expenses incurred during the proceedings. Finally, he maintained that he had not been granted legal aid since legal aid in Cyprus was only available in relation to criminal cases.

A. Admissibility

73. As regards the applicant's complaint concerning civil application no. 24/92, the Court recalls that it has already found in relation to the applicant's complaint about the length of the proceedings in that application, that this part of the application is inadmissible for non-compliance with the six months' rule set out in Article 35 § 1 of the Convention (see paragraph 57 above).

74. As regards the applicant's complaint of an insufficient award of legal costs, the Court notes that it is not its task to act as a court of appeal or, as is sometimes said, as a court of fourth instance, from the decisions taken by domestic courts (*Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-B, § 34 and *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I). In the present case the Court finds that there is no indication of arbitrariness or unfairness in the judgment of the Supreme Court of 15 June 2005 concerning the assessment of costs in the proceedings of civil action no. 1056/94. It notes that the applicant raised the same arguments before the Supreme Court which found on the evidence submitted before it that he had not proved that he had been

a permanent resident of Germany throughout the relevant proceedings (see paragraph 33 above). The mere fact that the applicant is dissatisfied with the outcome of the proceedings cannot in itself raise an issue under Article 6.

75. Finally, as regards the applicant's complaint about the lack of legal aid the Court does not consider it necessary to decide whether the applicant has exhausted domestic remedies, for it finds this complaint anyway manifestly ill-founded since the applicant has not explained how the unavailability of legal aid has affected his rights under Article 6 of the Convention. In particular, the applicant has not shown how the lack of legal aid deprived him of a fair trial and breached his right to effectively present his case in violation of that provision (see, amongst other authorities, *McVicar v. the United Kingdom*, no. 46311/99, ECHR 2002-III and *Harrison v. United Kingdom*, no. 11790/85, Commission decision of 9 November 1987). The Court further points out that in civil action, no. 1056/94 the judgments on both levels of jurisdiction were in the applicant's favour (see paragraphs 20 and 30 above). The Court therefore considers that the applicant has not substantiated his complaint in this respect.

76. In view of the above, it follows that the applicant's complaints under this head must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

78. The applicant claimed 20,000 Cyprus pounds (CYP) in respect of non-pecuniary damage. He did not make a claim for pecuniary damage.

79. The Government contested the claim.

80. The Court notes that it has found a violation in respect of the delay in the proceedings in civil action no. 1056/94. It considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award him EUR 6,000 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

81. The applicant also claimed CYP 67,855.83 for the costs and expenses incurred before the domestic courts. This amount included CYP 33,063.36 in respect of air travel fees, living expenses, flat rental and office maintenance and CYP 34,792.47 in respect of legal costs. The latter amount covered costs awarded against him by the District Court of Nicosia in certain interlocutory decisions in action no. 1056/94, the costs of appeal no. 10571, fees paid to the District Commercial Court of Darmstadt in Germany, legal costs he had paid to the respondents and legal fees of both his Cypriot and his German lawyers. Finally, the applicant claimed CYP 1,500 for costs and expenses incurred before the Court.

82. The Government contested these claims.

83. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 500 under this head, plus any tax that may be chargeable on that amount.

C. Default interest

84. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings in civil action no. 1056/94, civil application no. 132/00 and civil action no. 3740/01 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the proceedings in civil action no. 1056/94;

3. *Holds* that there has not been a violation of Article 6 § 1 of the Convention in respect of the proceedings in civil application no. 132/00 and civil action no. 3740/01;

4. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) for costs and expenses, to be converted into Cyprus pounds at the rate applicable at the date of settlement, plus any tax that may be chargeable on the above amounts;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President