AS TO THE ADMISSIBILITY OF

Application No. 34399/97
by Michael CHRISTAKIS
against Cyprus

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 18 September 1996 by Michael CHRISTAKIS against Cyprus and registered on 9 January 1997 under file No. 34399/97;

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 applicant is a Cypriot citizen, born in 1932. He is a pensioner and resides in Nicosia.

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

On 22 March 1986 the District Court (Eparhiako Dikastirio) of Nicosia awarded 2,800 pounds plus interest and costs and expenses in a civil action brought by Mr. S against the applicant. S obtained an order to seize and sell the applicant's property which he was not able to enforce. On 9 October 1986 the same court, on an application by S, ordered the applicant to pay the award in monthly instalments. The applicant agreed that he was in a position to pay 300 pounds per month as from 1 November 1986.

On 22 May 1987 S applied to the District Court of Nicosia for an order for the applicant's imprisonment on account of his failure to comply with the order of 9 October 1986. The application was heard on 23 June 1987. The applicant appeared and admitted that he had been negligent in not paying. On the same day the court ordered that, if the applicant failed to pay S 933.15 pounds within thirty days from the service of the order, he should be imprisoned for thirty days. The applicant did not comply and was imprisoned for two days. He was

released when S agreed to withdraw the warrant for his arrest. The agreement was made with no prejudice to S's rights.

On 27 January 1988 S made a second application for the applicant's imprisonment for failure to comply with the order of 9 October 1986. This application was heard on 2 March 1988. Although the applicant had been summoned, he did not appear. The court, having satisfied itself of the applicant's ability to pay, ordered that, if the applicant failed to pay S 1,459.50 pounds within ninety days from the service of the order, he should be imprisoned for 360 days.

The applicant did not comply and was imprisoned. He was released when he appealed. The appeal concerned both the order of 2 March 1988 and that of 23 June 1987. The applicant argued that, having been imprisoned once for failure to comply with the order of 2 March 1988, he could not be imprisoned again. He also argued that the court, before ordering his imprisonment, had failed to examine whether he was in a position to pay. Finally, he claimed that Article 11 of the Constitution and Article 5 of Convention had been violated.

His appeal was heard and rejected by a single judge of the Supreme Court (Anotato Dikastirio) on 10 July 1991. It was then renewed by the applicant before three judges of the Supreme Court. On 11 July 1996 the Supreme Court considered that different imprisonment orders could be made in respect of the applicant's failure to pay different instalments and that it had not been established that the applicant had been imprisoned more than once for failure to comply with the same imprisonment order. It also considered that the District Court had duly satisfied itself that the applicant was in a position to pay before making the orders. On 23 June 1987 the applicant had himself admitted that he had been negligent in not paying. On 2 March 1988 the applicant had been summoned, but did not appear. As a result, the District Court had to rely on S's statement under oath that the applicant had wilfully evaded payment. Contrary to what the applicant had argued, such an order could be made even in his absence. Finally, the Court examined the applicant's complaints concerning the Convention and the Constitution under the angle of the Commission's case-law under Article 1 of Protocol No. 4, which Cyprus had ratified. The Court considered that no issue arose because the applicant had been imprisoned for deliberately refusing to fulfil a contractual obligation.

COMPLAINTS

1. The applicant complains under Articles 3 and 5 of the Convention that he was imprisoned for failure to fulfil a contractual obligation.

2. The applicant also complains under Article 6 of the Convention that the order of 2 March 1988 was made in his absence.

THE LAW

1. The applicant complains under Article 5 (Art. 5) of the Convention that he was imprisoned for failure to fulfil a contractual obligation.

The Commission recalls that Article 5 para. 1 (Art. 5-1) of the Convention provides as follows:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to

secure the fulfilment of any obligation prescribed by law".

However, the Commission considers that, in the particular circumstances, no appearance of a violation of this provision is disclosed, because the applicant was detained for non-compliance with lawful orders of a court which aimed at securing the fulfilment of an obligation prescribed by law, as envisaged in Article 5 para. 1 (b) (Art. 5-1-b) of the Convention (cf. Eur. Court HR, Benham v. United Kingdom judgment of 10 June 1996, to be published in Reports 1996-I, para. 39).

The Commission has also examined the complaint under Article 1 of Protocol No. 4 (P4-1), which Cyprus has ratified and which provides as follows:

"No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation".

The Commission, however, recalls that, in accordance with its case-law, it is not prohibited under this provision to imprison a person if there are reasons apart from the material incapacity to fulfil contractual obligations, e.g. if the person concerned deliberately refuses to fulfil an obligation (No. 5025/71, Dec. 18.12.71, Yearbook 14 p. 692; No. 5067/71, Dec. 18.12.71, unpublished). In the particular circumstances, the Commission notes that the national courts were satisfied of the applicant's abil
lity t
repay his debt. Moreover, the applicant has not submitted anything which could cast doubt on this finding. It follows that no appearance of a violation of Article 1 of Protocol No. 4 (P4-1) is disclosed either.

As a result, the Commission considers that this part of the application must be rejected as manifestly ill-founded in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

2. Insofar as the applicant also complains that his imprisonment constitutes inhuman and degrading treatment prohibited under Article 3 (Art. 3) of the Convention, the Commission considers that, even assuming that the applicant has exhausted domestic remedies in this respect, the minimum level of severity required under that provision has not been reached (No. 10142/82, Dec. 8.7.85, D.R. 42, p. 86). It follows that no appearance of a violation of Article 3 (Art. 3) the Convention is disclosed and this part of the application must be also rejected as manifestly ill-founded in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains under Article 6 (Art. 6) of the Convention that the order of 2 March 1988 was made in his absence.

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 a criminal charge against him.

However, the Commission does not consider it necessary to determine whether the District Court of Nicosia, in making the order of 2 March 1988, determined the applicant's civil rights and obligations or a criminal charge against him within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. Even assuming that this was so, the Commission considers that no appearance of a violation of the right to a fair hearing guaranteed under that provision is disclosed. Although the applicant was not present at the relevant hearing, the Commission notes that the domestic courts were satisfied that the applicant had been duly summoned. Moreover, the applicant does not appear to deny that.

It follows that this part of the application must be rejected as

manifestly ill-founded in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber