AS TO THE ADMISSIBILITY OF

Application No. 25505/94
by Christakis CHRISTOFOROU
against Cyprus

The European Commission of Human Rights (First Chamber) sitting in private on 6 April 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY,
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
L. LOUCAIDES
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV

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 27 September 1994 by Christakis CHRISTOFOROU against Cyprus and registered on 27 October 1994 under file No. 25505/94;

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 of the case is a citizen of the United Kingdom, born in 1954 in Larnaca, Cyprus, and currently residing in Nicosia, Cyprus. In the proceedings before the Commission he is represented by Dr. Christos Clerides, a lawyer practising in Nicosia.

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

On a date which has not been specified, the applicant together with three others lodged a civil action before the District Court of Nicosia claiming ownership of 80% of the holding of a group of companies registered in Cyprus.

On 20 July 1989 the District Court of Nicosia issued an interim injunction restraining the defendants in the above-mentioned action from alienating the assets of the companies pending the determination of the applicant's and the other plaintiffs' claim. On 3 July 1990 the court confirmed the injunction.

On a date which has not been specified, Mr G, one of the directors of the above-mentioned group of companies, was convicted by the District Court of breaking the injunction. The applicant claims that the director was assisted in doing so by the Archbishop of Cyprus. He also claims that the Archbishop signed an agreement pending the injunction to acquire some of the assets of the group of companies and

that the Archbishop has been assisting actively or passively the defendants in the civil action to break the injunction.

On 31 January 1992 the applicant and the other plaintiffs in the civil action asked the District Court of Nicosia to punish the Archbishop for aiding and abetting G to break the injunction. They also asked the court to order the Archbishop to appear in person at the hearing. The Archbishop opposed both requests claiming that the District Court lacked jurisdiction. On 14 October 1992 the District Court considered that it had jurisdiction and ordered the Archbishop to appear before it.

The Archbishop asked the Supreme Court to issue an prohibition order preventing the District Court from hearing the case and a certiorari order quashing the decision of 14 October 1992 of the District Court. On a date which has not been specified the Supreme Court rejected both requests. The Archbishop appealed against the decision before an enlarged chamber of the Supreme Court.

On 6 December 1993 the Supreme Court allowed the Archbishop's appeal. The Supreme Court considered that civil courts had only been given the power to punish civil contempt and that civil contempt was committed whenever a party in the proceedings disobeyed an order issued by the civil court. The competence to punish criminal contempt, which third parties were also liable to commit, belonged to the criminal courts. There was only one exception, that of criminal contempt committed by a third party in the presence of a civil court, which the civil court was competent to punish. It followed that the District Court, which acted as a civil court in the particular case, lacked jurisdiction to punish the Archbishop who was not a party in the main proceedings before it. As a result, the Supreme Court ordered the District Court not to proceed with the application against the Archbishop and quashed its decision of 14 October 1992.

Having failed to obtain the punishment of the Archbishop by the District Court, the applicant attempted to bring a private criminal action against him. On 8 June 1994, however, the Attorney General acting under Article 113 para. 2 of the Constitution intervened and dismissed the proceedings on the ground that they did not aim at the protection of a private right.

By letter of 8 June 1994 the applicant's lawyer asked the Attorney General to institute criminal proceedings himself. On 8 July 1994 the Attorney General refused on the ground that the State should not intervene in civil disputes which should be resolved by the civil courts.

COMPLAINTS

The applicant complains under Articles 6 para. 1, 13 and 14 of the Convention that he could not have his rights against the Archbishop determined. He claims that, as a result, he was denied effective protection in the principal action pending before the District Court which was civil in character since it involved a dispute over the ownership of a group of companies.

THE LAW

The applicant complains that he was denied judicial protection in his dispute with the Archbishop and the defendants in the action he has lodged claiming ownership of a group of companies. He invokes, inter alia, Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission recalls that Article 6 para. 1 (Art. 6-1) of the Convention guarantees the right of every person to have access to a court in the determination of his civil rights and obligations (Eur. Court H.R., Golder judgment of 21 February 1975, Series A

no. 18, p. 18, para. 36). States are, however, left with a free choice of the means to be used towards this end (No. 10871/84, Dec. 10.7.86, D.R. 48 p. 154) and the right of access to a court does not include a right to institute criminal proceedings or have such proceedings instituted against third persons (No. 9777/82, Dec. 14.7.83, D.R. 34 p. 158).

The Commission recalls that the applicant was prevented from obtaining the "punishment" of the Archbishop for aiding and abetting one of the defendants in the main action to act in breach of an interim order restraining the latter from alienating the assets of a group of companies the ownership of which was claimed by the applicant. It transpires, however, from the decision of the Supreme Court of 6 December 1993, that the only manner in which the courts could have "punished" the Archbishop would have been to convict him of the criminal offence of contempt of court. It also transpires from the Attorney General's letter of 8 July 1994 that the conviction of the Archbishop for contempt of court was not the only means by which the applicant could have obtained judicial protection in respect of his claims.

In the light of all the above, the Commission considers that the applicant in reality complains of his inability to institute criminal proceedings against the Archbishop. In doing so, however, the applicant claims a right which is not guaranteed by the Convention.

The Commission considers, therefore, that the application is incompatible ratione materiae with the provisions of the Convention and must be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber	President of the First Chamber
(M.F. BUQUICCHIO)	(C.L. ROZAKIS)