AS TO THE ADMISSIBILITY OF

Application No. 20492/92
by Nicos SHACOLAS
against Cyprus

The European Commission of Human Rights (Second Chamber) sitting in private on 2 March 1994, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

Mr. K. ROGGE, 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 26 May 1992 by Nicos SHACOLAS against Cyprus and registered on 13 August 1992 under file No. 20492/92;

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 1927 and residing at Limassol. Before the Commission he is represented by George Cacoyiannis and Pambos Ioannides, lawyers practising in Limassol.

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

The applicant is a major shareholder of two companies registered in Limassol which he represents. The companies entered into a contract of guarantees with the Federal Bank of Lebanon.

On 23 January 1986 the Federal Bank of Lebanon instituted proceedings against the applicant before the District Court of Nicosia for various sums claimed on the basis of the contract in question. The applicant filed a counterclaim for damages for an alleged libellous letter sent on behalf of the Federal Bank of Lebanon to the Central Bank of Nigeria. On 11 January 1989 the District Court gave its ruling (No. 747/86) excluding the counterclaim since it "might be conveniently disposed of in an independent action". The Court found that the counterclaim affected the applicant's interests in Nigeria and did not, therefore, relate to the subject matter of the Bank's action.

The applicant appealed against the above ruling of the District Court of Nicosia. By its judgment of 21 April 1992 (No. 7804/92) the

Supreme Court confirmed the ruling of the District Court to exclude the counterclaim on the ground that as it was not related to the Bank's action, it might provoke undue delays in the proceedings.

COMPLAINTS

The applicant complains that as a result of the Court's decision not to examine his counterclaim he has been deprived of his right to a fair trial. In particular, while the plaintiffs instituted their action in the Cypriot courts, the applicant was prevented from raising a counterclaim in the same action and was not, therefore, given the equality of arms enshrined in Article 6 para. 1 of the Convention.

Moreover, he was prevented from having access to the Court as regards his libel claim against the plaintiff. He again invokes Article 6 para. 1 of the Convention.

THE LAW

The applicant complains that while the Federal Bank of Lebanon could bring an action against him he was refused the possibility to bring his libel claim against the Bank before the Cypriot Courts. He was, thus, placed under a procedural disadvantage vis-a-vis his opponent.

The applicant invokes Article 6 para. 1 (Art. 6-1) of the Convention which, insofar as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

This provision guarantees, inter alia, the right of access to a court, that is the right to bring an action before a court as regards a dispute over civil rights and obligations (cf. Eur. Court H.R., Philis judgment of 27 August 1991, Series A, no. 209, para. 59). Moreover, Article 6 para. 1 (Art. 6-1) of the Convention implies that each party shall have a reasonable opportunity of presenting his case to the Court under conditions which do not place him at a substantial disadvantage vis-a-vis his opponent. The requirement of equality of arms presupposes a "fair balance" between the parties (cf. Eur. Court H.R., Feldbrugge judgment of 26 May 1986, Series A no. 99, p. 17, para. 44 and Eur. Court H. R., Dombo Beheer B.V. judgment of 27 October 1993, Series A no. 274, p. 15, para. 33).

The Commission therefore has to examine whether, as a result of the exclusion of his counterclaim, the applicant was placed at a substantial disadvantage vis-a-vis his opponent and, if so, whether this has affected the equality of arms in such a way as to render the proceedings as a whole unfair within the meaning of Article 6 para. 1 (Art. 6-1).

The Commission recalls that the Courts of Cyprus rejected the applicant's counterclaim on the ground that it was not related to the main action. It finds no indication that the exclusion of the applicant's counterclaim prevented him from effectively presenting his defence in respect of the main action or that he was otherwise unfairly disadvantaged.

Moreover since the applicant can bring a separate action, as regards his counterclaim in the appropriate jurisdiction, the essence of his right of access to court has not been affected.

Therefore, the application, as it has been submitted, does not disclose any appearance of a violation of Article 6 para. 1 (Art. 6-1).

It follows that 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

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)