



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

SECOND SECTION

CASE OF SERGHIDES v. CYPRUS

(Application no. 44730/98)

JUDGMENT
(Just Satisfaction)

STRASBOURG

10 June 2003

FINAL

24/09/2003

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 Serghides v. Cyprus,

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

Mr J.-P. COSTA, *President*,

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 20 May 2003,

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

PROCEDURE

1. The case originated in an application (no. 44730/98) against the Republic of Cyprus lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Cypriot nationals, Mrs Loukia Serghides and Mrs Amaryllis Christoforou, on 17 July 1998.

2. On 22 May 2001 the Court declared the application partly admissible as regards the complaints of Mrs Serghides only (“the applicant”).

3. In a judgment delivered on 8 October 2002 (“the principal judgment”), the Court held that there had been a violation of Article 1 of Protocol No. 1 (unanimously) and of Article 6 § 1 (unanimously). More specifically, as regards Article 1 of Protocol No. 1, it held that the applicant had been deprived of her property without any compensation (*Serghides and Christoforou v. Cyprus*, no. 44730/98, §§ 47-52, 5 November 2002, unreported). As regards Article 6 § 1 of the Convention, the Court held that there had been a violation with respect to the length of proceedings before the national courts and the applicant’s right of effective access to court (*ibid.* §§ 62-65, 69-71).

4. Under Article 41 of the Convention the applicant sought just satisfaction amounting to 136,000 Cypriot pounds (“CYP”), plus 9% interest, for the deprivation of her property, as well as CYP 79,230 for the loss of the use of her property, and the consequent loss of opportunity to develop and lease it. Under the head of non-pecuniary damage she claimed CYP 50,000. Lastly, she claimed CYP 1,896 plus 10% VAT in respect of costs and expenses incurred for her representation before the national courts; CYP 16,323, plus 10% VAT for her representation before the Court;

CYP 2,000 for expert fees; and the reimbursement of CYP 256 which the Supreme Court had ordered her to pay for the Government's costs in the domestic proceedings.

5. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit their written observations on the real value of the land in question and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 80 and point 4 of the operative provisions).

6. The applicant and the Government filed supplementary observations on 13 February 2003 and 14 February 2003 respectively. The applicant submitted further comments on 28 February 2003.

THE LAW

7. 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. Pecuniary damage

1. *The applicant's submissions*

8. The applicant claimed compensation for the deprivation of her property – 2,060 square feet of land – which was valued by an expert at CYP 165,000 plus 9% interest (as provided by Articles 6 and 8 of the Compulsory Acquisition Law 1983) to be paid from 5 November 2002, the date that the Court adopted its principal judgment in the instant case, until the date compensation would actually be paid to her. This amount was calculated on the basis that the current market value per square foot of the expropriated property was equal to that of the rest of the plot of land, that is, CYP 80 per square foot. The applicant also submitted a second valuation report by another expert valuing the property at CYP 162.350. She maintained that the latter report verified the correctness of the first valuation on which she had founded her claim.

9. As for the date of valuing the property, the applicant submitted that, in accordance with the Court's case-law, the amount of compensation should be calculated on the basis of the current value of the property (relying on *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, §§ 37 and 39; *Former King of Greece*

and Others v. Greece [GC] (just satisfaction), no. 25701/94, § 76, unreported). Accordingly, the expert valuations she presented were based on recent sales of certain plots of land in the same vicinity. She also emphasised that the date of the valuation of the property had to be as close as possible to the date of payment of compensation in order to ensure the adequacy of the latter (relying on the two judgments in *Guillemin v. France*, judgments of 21 February 1997, *Reports of Judgments and Decisions* 1997-I, §§ 54-56, and of 2 September 1998, (Article 50), *Reports*, 1998-VI, §§ 23-24).

10. The applicant did not accept the Government's contention that just satisfaction should be determined on the basis of the market value of the land on 27 March 1978 (see paragraph 16 below). The applicant claimed that it would be wrong for the Court to determine the amount of compensation based on the land's value then, which would be considerably lower than its current market value, and that account should be taken of the fact that she has had no responsibility for the delay in the payment of the compensation. In particular, she pointed out that the adoption of the method of assessment of just satisfaction proposed by the Government would result in a violation of the principle of proportionality and would not constitute equitable and adequate compensation, since she would not be able to replace the property at issue with other property of an equivalent value. In effect, this would mean that the Government would benefit from their unlawful expropriation of the property.

11. In any event, the applicant averred that, even if the Court decided to assess just satisfaction on the basis of the Government's method, according to her estimations, the market value of the property in 1978 was CYP 20,600. Taking into account the consumer price index, the applicant stated that in January 2003 the purchasing power of the above sum was equivalent to CYP 64,118.

12. The applicant argued that in view of the fact that the expropriated land had become part of Grivas Digenis Avenue, *restitutio in integrum* was not a feasible or practical remedy. She therefore invited the Court to base its decision on the two valuations that she had submitted and award her the amount of CYP 165,000 plus interest (see paragraph 8 above) in respect of her property.

13. Furthermore, the applicant claimed compensation for the loss of the use of her property and the consequent loss of opportunity to develop or lease it, from September 1989 until 5 November 2002. This she estimated at CYP 98,340 including interest at 8% as provided by the Courts of Justice Law of Cyprus for judgment debts. In this connection, the applicant referred to the Court's judgment in the case of *Loizidou v. Turkey* ([Article 50], judgment of 29 July 1998, *Reports* 1998-IV, §§ 33-34), where the Court considered as reasonable the general approach of assessing the loss suffered by the applicant with reference to the annual ground rent, calculated as a

percentage of the market value of the property, that could have been earned on the property during the relevant period. In this connection, the present applicant stated that this part of her land could have been sold to a third party or to the Government. She also claimed that it could have been used, *inter alia*, for parking purposes, the exhibition of cars and other products or the installation of advertisement display boards.

14. In the circumstances, the applicant argued that no issue of betterment arose that affected the amount of compensation to be awarded by the Court. The applicant observed that the Streets and Buildings Regulation Law (Cap. 96), on the basis of which she was deprived of her property, did not provide that betterment should affect compensation, in contrast to the Law on Compulsory Acquisition (Cap. 15/62). Yet, even according to the provisions of the latter law, only data at the time of notification of the acquisition should be taken into account in this assessment, and any betterment brought about by the widening and reconstruction of the avenue, was offset by the injurious effect which the expropriation had had on the rest of the property. Citing the valuation reports she had submitted to the Court, the applicant pointed out that, in any event, none of the road alterations had increased the value of the remainder of the plot. On the contrary, she argued that they had had an adverse effect on its value.

15. Finally, as regards the Government's assertion that, in view of the case of *Kathleen Georgallides v. the Attorney-General*, the applicant could receive double compensation (see paragraph 20 below), the applicant emphasised that she could not have sought compensation in the domestic courts and that the above case was irrelevant and indeed inapplicable. Distinguishing her application, she pointed out, *inter alia*, that in *Georgallides* it was decided that the measure in question constituted a limitation imposed on the property resulting from a legal, compulsory acquisition, rather than a deprivation of the property following an illegal compulsory acquisition, as in the instant case. She also observed that in the *Georgallides* case the Supreme Court had not dealt with the issues of deprivation or just satisfaction in cases where the European Court of Human Rights has already found a violation of Article 1 of Protocol No. 1 to the Convention.

2. *The Government's submissions*

16. The Government submitted that, if the Court granted just satisfaction to the applicant, the amount of compensation had to be determined on the basis of the market value of the land on 27 March 1978 and not its current value as claimed by the applicant (see paragraphs 8 and 9 above). The Government contended, with reference to their own expert valuation, that the Court should take into consideration that in 1978 the market value of plot 565 was CYP 70 per square meter and that, because of the street-widening scheme, considerable betterment had accrued to the remaining

part of plot 565, increasing its market value. They pointed out that if a violation of Article 1 of Protocol No. 1 had not been found by the Court, the applicant would have been paid compensation by the Government in 1978 amounting to CYP 13,440, minus the profit she had made as a consequence of the substantial betterment (an amount which they did not specify). In calculating that sum, the Government, accepting that a considerable time had elapsed since 27 March 1978, took into account the interest rates applicable during the relevant period, as well as inflation.

17. However, in this connection, the Government, referring to their expert valuation submitted with their observations on the merits, also contended that the mere 8.8% reduction in the size of plot 565 resulting from the expropriation was countered by the increase in the value of the remaining land. Indeed, their expert valuation, taking into account the sale in 1978 of plots of land situated in the same vicinity as well as the substantial betterment, concluded that the expropriated part of the plot in fact had no value whatsoever.

18. Furthermore, the Government stated that adopting the current market value method of valuation, as proposed by the applicant, would be contrary to the very notion of equitable compensation, placing her in a more profitable situation than the one she would have been in, but for the violation. They maintained that it would be difficult to accept the relevance of the market value of the property at any time after that date, particularly in view of the fact that in 1992 the applicant transferred her property rights to her children.

19. The Government stressed that the acquisition of the property in 1978 had been in conformity with the provisions of national law and that its legality had been confirmed by the Court in its principal judgment with the finding of a violation of Article 1 of Protocol No. 1 being limited to the failure of the Government to pay compensation to the applicant. Thus, they argued, the lawfulness of the violation was directly relevant in determining the issue of just satisfaction.

20. In addition, the Government submitted that the applicant could have brought, and still can bring, proceedings before the domestic courts seeking compensation under Article 23 § 3 of the Constitution of the Republic of Cyprus. In particular they contended that, on the basis of the judgment of the Supreme Court in the case of *Kathleen Georgallides v. the Attorney-General*, eventually the applicant might receive double compensation. They affirmed that, irrespective of any award made by the Court, her right to compensation under domestic law would continue to exist.

21. Finally, in reply to the applicant's claim for the loss of the use of the property, the Government submitted that it was totally unfounded. They alleged that the disputed area consisted of a narrow strip of land along the frontage of plot 565 on Grivas Digenis Avenue. They recalled that from 1959 onwards the applicant had leased the land at an annual rent to Mobil

Oil (Cyprus) Ltd, which operated a petrol station there. The Government also repeated that in 1992 the applicant had chosen to alienate all her proprietary interests.

3. *The Court's assessment*

22. The Court recalls that, where it has found a breach of the Convention in a judgment, the respondent State is under a legal obligation to put an end to that breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI).

23. The respondent Government are, in principle, free to choose the means whereby they will comply with the judgment. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the breach allows for *restitutio in integrum*, it is for the respondent Government to effect it, the Court having neither the power nor the practical possibility of doing so itself. However, if national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I; *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, pp. 58-59, § 34).

24. In the principal judgment the Court held, *inter alia*, that the present applicant had been deprived of her property without any compensation, in breach of Article 1 of Protocol No. 1.

25. The Court first considers that, in the circumstances of the case, the nature of the breach found in the principal judgment does not allow the Court to proceed on the basis of the principle of *restitutio in integrum*. Accordingly, the Court is of the opinion that the key question to be decided now is the value of the expropriated land, in order to determine the financial compensation to be awarded in just satisfaction.

26. The Court is aware of the difficulties in calculating the value of property and notes the considerable disparity between the parties' estimates. This is mainly due to the different methods of calculation adopted by the parties' experts.

27. The Court considers that the assessment must be made using present day land values, when the Court itself found a violation of the Convention.

28. The Court, considering the particular circumstances of the deprivation of the applicant's property, agrees with her that the figure put forward by the Government is inadequate. In this connection, the Court observes that the submissions of the Government are vague. On the one hand, they do not specify how much should be deducted as profit or betterment from the total sum they propose and, on the other hand, the

expert valuation they submitted concludes that the expropriated part of the property has no value at all.

29. In addition, the Court is not persuaded by the Government's thesis that the applicant can apply for compensation to the domestic courts. However, even assuming that such a possibility were to exist, the Court finds it improbable that the applicant would receive double compensation, since the domestic courts, in assessing the matter, would inevitably take into account any amount awarded to her by this Court. In any event, in the light of the excessive length of the proceedings in the applicant's case before the national courts (see principal judgment, §§ 62-65), it considers that it would be unreasonable to expect her to initiate further proceedings at the domestic level and incur additional costs.

30. Nevertheless, the Court considers that the applicant's estimates are excessive, particularly in view of the shape and size of the land (a strip, 4 meters in width), which inevitably limits the way in which it can be used. Moreover, the Court notes that the applicant has only made limited, general statements as to the possible use and/or development of this part of the land (paragraph 13 above). She has not submitted convincing details of any specific plans she had for its use and/or development for a more profitable purpose.

31. In view of the above considerations and in the absence of an agreement between the parties, the Court, deciding on an equitable basis as required by Article 41 of the Convention, awards the applicant 60,000 euros (EUR) in compensation for the pecuniary damage sustained.

B. Non-pecuniary damage

32. In respect of non-pecuniary damage, the applicant claimed CYP 50,000. She maintained that she suffered anguish, distress and feelings of helplessness, frustration and mistrust for public authorities because the Republic had unlawfully deprived her of her property without giving her the opportunity to challenge this deprivation and also, because the proceedings were unreasonably lengthy. She claimed that all this had a detrimental effect on her physical and mental health.

33. The Government submitted that the claim under this head was unfounded and grossly exaggerated. They maintained that the outcome of the proceedings could not in any way have altered the fact that the affected part of the plot had become part of the street, and thus these proceedings were not directly connected with the alleged violation. Furthermore, and despite the question of *locus standi*, they stated that the applicant's claim was dismissed at first instance as being out of time and that the delay in the proceedings was to a very substantial extent attributable to her conduct since she had failed to apply to have the appeal fixed for hearing. Finally

they contended that there was no connection between the health problems of which the applicant complained and the question under consideration.

34. The Court considers that the applicant did suffer certain non-pecuniary damage, such as distress and frustration, resulting from the deprivation of her property without any compensation, the undue prolongation of proceedings before the domestic courts, and the denial of effective access thereto. In the Court's view, the finding in its principal judgment does not in itself afford sufficient compensation in this respect.

35. Taking into account the circumstances of the case and making an assessment on an equitable basis, the Court awards the applicant the sum of EUR 12,000 under this head.

C. Costs and expenses

36. The applicant sought reimbursement of costs and expenses incurred in the proceedings before the national courts and the Court amounting to CYP 32,858.60. She submitted detailed schedules setting out her claims as follows:

(a) CYP 2,341.60 for fees and expenses, covering work carried out by her lawyer before the national courts, as well the reimbursement of the costs which the Supreme Court had ordered her to pay for the Government's costs in the domestic proceedings;

(b) CYP 30,773 for fees covering work carried out by her lawyer before the Court, for the legal advice provided by Professor P.D. Dagtoglou (Greece) (CYP 1,323) and for the cost of four expert reports assessing the value of the property at issue (CYP 4,150). The applicant submitted invoices with respect to the first two expert reports filed before the principal judgment amounting to CYP 2,000. Regarding the two reports submitted in connection with the present judgment, she referred to a revised statement of legal fees and expenses prepared by her lawyer, including the cost of the above reports.

37. The Government submitted that the proceedings before the domestic courts were not directly connected to the alleged violation and, therefore, the applicant was not entitled to the reimbursement of these costs. As regards the costs claimed for the procedure before the Court, they maintained that they were grossly exaggerated.

38. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and were also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction), op. cit., § 54). Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see *Beyeler v. Italy* (just satisfaction) [GC], no. 33202/96, § 27, 28 May 2002).

39. As regards the costs incurred before the domestic courts, the Court does not doubt that the fees claimed were actually incurred. It notes that the

costs incurred in the domestic proceedings were connected to its finding of a violation of Article 1 of Protocol No. 1 (deprivation of property without compensation) and the “access to court” requirement of Article 6 § 1. Although the Court observes that they are not related to its finding of a violation of the “reasonable time” requirement in Article 6 § 1, it considers that the protracted duration of the domestic proceedings has to some extent increased the applicant’s legal expenses.

40. Furthermore, with respect to the costs incurred by the applicant before the Court, it does not doubt that the fees claimed were actually incurred. It notes that the observations submitted by the applicant were extensive and that the costs associated with producing expert reports, both before and after the judgment on the merits, were essential for enabling the Court to reach its decision regarding the issue of just satisfaction.

41. However, the Court agrees with the Government that the overall costs claimed are excessive. In this connection, it takes into account that at the admissibility stage of the proceedings it had dismissed all the complaints of the second applicant (see paragraphs 1 and 2 above). The Court therefore considers that the legal costs incurred by the applicant should only be partially reimbursed.

42. The Court finds that the fees for the expert reports were necessarily incurred and reasonable as to the quantum and, accordingly, should be reimbursed to the applicant in full.

43. Having regard to the circumstances of the case and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant a total sum of 20,000 EUR under this head.

D. Default interest

44. The applicant claimed interest from the date of the principal judgment of the Court (5 November 2002) until full payment of the compensation at the rate of either 9% per annum (as provided by the Compulsory Acquisition Law of Cyprus) or 8% per annum (as provided by the Courts of Justice Law of Cyprus for judgment debts).

45. Having regard to its practice in such matters, the Court considers that the starting date for the payment of any default interest would be three months after the delivery of the present judgment on just satisfaction. Moreover, it fixes the default interest at an annual rate equal to the marginal lending rate of the European Central Bank, plus three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the present judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Cypriot pounds at the rate applicable at the date of settlement:

(i) EUR 60,000 (sixty thousand euros) in respect of pecuniary damage;

(ii) EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage;

(iii) EUR 20,000 (twenty thousand euros) in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 10 June 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President