



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

FIRST SECTION

CASE OF ODYSSEOS v. CYPRUS

(Application no. 30503/03)

JUDGMENT

STRASBOURG

8 March 2007

FINAL

08/06/2007

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 Odysseos 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 N. VAJIĆ,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 15 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 30503/03) 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 Georgios Odysseos (“the applicant”), on 22 July 2003.

2. The Cypriot Government (“the Government”) were represented by the Government's Agent, Mr P. Clerides, Attorney-General of the Republic of Cyprus.

3. On 23 March 2006 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

4. By letter dated 17 October 2006, the applicant's son, Mr Panayiotis G. Odysseos, informed the Court about his father's death and expressed the wish to continue the proceedings in the capacity of administrator of his father's estate.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

5. At the time of lodging his application with the Court in 2003 the applicant was a retired farmer living in Limassol. He died on 15 April 2005.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. The applicant was the owner of three plots of land in the village of Ayios Tychonas in the district of Limassol (plots nos. 148, 137 and 137/1). These plots were classified under the Antiquities Law as being of archaeological importance and were within the ambit of a town planning zone subject to building restrictions for the purpose of protecting antiquities in the area.

8. Following two notices of expropriation issued on 21 March 1986 and 15 May 1987 respectively, two orders of expropriation were published on 4 July 1986 (no. 856) and 24 July 1987 (no. 1251) in the Official Gazette of the Republic of Cyprus pertaining to the applicant's plots. The applicant was offered the amount of 6,500 Cyprus pounds (CYP) in respect of the first plot and CYP 22,100 for the remaining two.

9. On 1 November 1994 the applicant instituted two sets of civil proceedings (by way of reference) before the District Court of Limassol for the assessment of the compensation (proceedings nos. 56/94 and 58/94) in respect of the expropriation of his property.

10. In proceedings no. 56/94 the applicant claimed the amount of CYP 36,280 as compensation for the compulsory acquisition of plot no. 148 plus CYP 1,000 for the valuer's fees, interest at a rate of 9% from 21 March 1986 and costs and expenses in respect of the proceedings. According to the acquiring authority's expert the value of the property in question was CYP 3,800.

11. The pleadings were completed on 23 October 1995.

12. On 6 November 1995 the applicant withdrew an application filed on 14 September 1995 concerning the failure of the acquiring authority to file its defence. On the former date the case was set for mention for 5 December 1995.

13. In proceedings no. 58/94 the applicant claimed the amount of CYP 72,385 as compensation for the compulsory acquisition of plots nos. 137 and 137/1 plus CYP 1,500 for the valuer's fees, interest at a rate of 9% from 15 May 1987 and costs and expenses in respect of the proceedings. According to the acquiring authority's expert the value of the property in question was CYP 16,000.

14. The applicant filed his statement of claim on 27 February 1995 and the acquiring authority filed its defence thereto on 30 October 1995.

15. The proceedings were subsequently joined following an application by the acquiring authority to this effect.

16. The evidence that was presented by the expert witnesses of the parties in the proceedings essentially differed with respect to the determination of the market value of the property. On the one hand, the applicant's expert maintained that even if the properties were situated in a specific planning zone, they should be compared to similar plots of land

sold outside that zone since the acquiring authority's inclusion in the particular zone brought about a reduction in the value of the land for which he should be compensated. On the other hand, the Government's expert compared the relevant properties to properties within the same planning zone with the same legal and natural features.

17. From 6 November 1995 until 25 April 1996 the court fixed the cases for mention four times. On the latter date the parties requested a hearing date. The court fixed the cases for hearing for 18 December 1996. However, on 15 October 1996 the court adjourned the hearing until 31 January 1997 due to a continuing hearing in another case. The case was then fixed for 25 February and then for hearing for 24 June 1997. On that date the court adjourned the cases until 12 December 1997 due to a continuing hearing in another case and the lack of shorthand typist to take the minutes.

18. In the meantime, on 5 August 1997, the cases were allocated to a Senior District Court Judge. On the above date they were fixed for directions for 18 September 1997 and then for hearing for 16 December 1997. On the latter date the parties requested for an adjournment for the purpose of friendly settlement negotiations and the cases were set for directions for 22 December 1997 and on that date for hearing for 14 April 1998.

19. From 14 April 1998 until 17 December 1998 the court adjourned the cases twice. Then, from the latter date until 27 September 1999, the hearing of the cases was adjourned three times at the applicant's request, primarily for the purposes of appointing a new valuer.

20. On 7 January 2000 the applicant filed an application for amendment of his statement of claim. On 11 January 2000 the cases were fixed for programming for 29 February 2000 and a court order was issued granting the application. The applicant filed his amended statement of claim on 26 January 2000. In this the applicant claimed the higher sum of CYP 107,597 as compensation for the compulsory acquisition of his property.

21. On 29 February 2000 the court re-fixed the cases for directions for 31 March 2000 since the trial judge was absent. On the latter date the cases were adjourned at the applicant's request until 7 April 2000.

22. On 16 May 2000 the parties requested a hearing date. The hearing was then fixed for 10 October 2000. On that date the applicant requested an adjournment in order to file an application to amend his statement of claim since he would be appointing another valuer. The court reluctantly granted the adjournment until 30 January 2001. In the meantime, the applicant filed the application for amendment of his statement of claim on 2 November 2000. On 21 December 2000 the court issued an order for the requested amendment.

23. It appears from a document submitted by the applicant that on 11 December 2000 the applicant received the amount of CYP 28,600 plus

interest as compensation. An additional CYP 1,300 was due to the applicant but no information has been given by the parties as to whether he received this amount and if so, when.

24. On 30 January 2001 the hearing of the cases was not held since the filing of the amended pleadings had not been completed.

25. On 12 November 2001 the cases were adjourned until 29 January 2002 at the applicant's request for the purposes of filing his amended statement of claim as ordered by the court on 21 December 2000. Following two extensions of the set time-limit granted by the court the amended statement of claim was filed on 25 January 2002. In this the applicant claimed the higher sum of CYP 182,734 as compensation for the compulsory acquisition of his property.

26. On 29 January 2002 the cases were adjourned to allow the acquiring authority to file its amended defence and the hearing of the cases was fixed for 21 March 2002. The amended defence was filed on 31 January 2002.

27. From 21 March 2002 until 9 October 2002 the cases were adjourned twice at the acquiring authority's request in view of the fact that its valuer was ill.

28. On 11 September 2002 the acquiring authority filed an application to withdraw its valuation report since its valuer had stepped down and sought to replace the valuation report with a new one prepared by another expert.

29. On 6 December 2002 the court fixed the case for hearing for 20 January 2003. It was then adjourned at the acquiring authority's request until 12 February 2003. In the meantime the acquiring authority filed an application on 22 January 2003 raising certain legal points.

30. On 12 February 2003 the hearing was fixed for 7 April 2003.

31. The proceedings were completed on the above date and the court issued an *ex tempore* decision rejecting the applicant's claims. It found that the applicant had not established his case since his expert had based his valuation on comparative sales relating to properties within different planning zones with a different level of building restrictions than the properties in question. The applicant was awarded legal costs and CYP 800 as valuation costs.

32. The applicant did not lodge an appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

33. 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 ... hearing within a reasonable time by [a] ... tribunal...”

34. The Government submitted that the delay in the proceedings had been primarily caused by the parties' conduct. In this respect they pointed to the parties' requests for adjournments, the interim applications lodged before the court and the delays that had occurred in the filing of pleadings.

35. The Court observes that the period to be taken into consideration began on 1 November 1994 and ended on 7 April 2003. It thus lasted eight years, five months and seven days for one level of jurisdiction.

A. Admissibility

36. The Court notes that the remainder 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

37. 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 applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

38. The Court has taken note of the applicant's and the parties' conduct in general. In this respect it observes that several adjournments were granted at the applicant's lawyer's request (see paragraphs 19, 21-22 and 25 above) and that the applicant applied for leave to amend his statement of claim twice during the proceedings (see paragraphs 20 and 22 above). It also notes the significant delay on the applicant's part in the filing of his amended pleadings (see paragraph 25).

39. However, it considers that this is not sufficient to justify the protracted length of the proceedings. The Court finds that the time taken by the District Court in examining the case appears to be exceptionally long especially in light of the fact that the case did not involve any particular factual or legal complexity. The District Court was responsible for a significant number of delays in the proceedings. In particular, it adjourned or re-scheduled the cases a number of times for substantial periods (see paragraphs 17-19 above). The intervals in between undoubtedly had a serious impact on the overall length of the proceedings. Furthermore, the Court notes that there was at least one period of inactivity in the proceedings from 12 January 2001 until 12 November 2001 (see paragraphs

24-25 above) for which no explanations have been given by the Government.

40. In conclusion, having taken into account the circumstances of the case and the fact that the case was pending for more than eight years on just one level of jurisdiction, the Court finds, that in the instant case the length of the proceedings before the District Court of Limassol was excessive and failed to meet the “reasonable time” requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed CYP 100,000 in general in respect of pecuniary and non-pecuniary damage. His claim was for the loss suffered because of the continuous denial of the use of his land and the suffering and distress he had been through over a prolonged period of time.

43. The Government contested the claim.

44. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It notes in this respect that the applicant's complaint under Article 1 of Protocol No. 1 was declared inadmissible in its decision of 23 March 2006. The Court therefore rejects this claim. On the other hand, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award him EUR 9,000 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

45. The applicant claimed CYP 3,000 in respect of the expert's fees for the valuation reports submitted before the District Court. He maintained that although he had been awarded the fees by the Court these had never been paid to him. The applicant did not provide any documents in this respect.

46. The Government contested the claim.

47. 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 applicant's claim under this head.

C. Default interest

48. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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 9,000 (nine thousand euros) in respect of non-pecuniary damage 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 amount;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President