



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

FOURTH SECTION

**CASE OF EUGENIA MICHAELIDOU DEVELOPMENTS LTD AND
MICHAEL TYMVIOS v. TURKEY**

(Application no. 16163/90)

JUDGMENT
(Just satisfaction)
(Friendly settlement)

STRASBOURG

22 April 2008

This judgment is final but it may be subject to editorial revision.

In the case of Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Stanislav Pavlovski,

Ljiljana Mijović,

David Thór Björgvinsson,

Päivi Hirvelä, *judges*,

Metin A. Hakki, *ad hoc judge*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 1 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 16163/90) against the Republic of Turkey 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 a Cypriot-registered company, Eugenia Michaelidou Developments Ltd (“the company”) and a Cypriot national, Dr Michael Tymvios, on 26 January 1990 (“the applicant”).

2. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant had complained principally under Article 1 of Protocol No. 1 that he had been unable to access or enjoy use or possession of property in the northern part of Cyprus.

4. Following communication of the application to the Government, the case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr R. Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government subsequently appointed Mr M. Hakki to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

5. On 8 June 1999, having obtained the parties' observations, the Court declared the application admissible.

6. On 31 July 2003, the Court adopted its judgment on the merits (“the principal judgment”), finding, *inter alia*, a violation of Article 1 of Protocol No. 1 and reserving the issue of pecuniary and non-pecuniary damages.

7. By letters dated 22 May 2007, the parties informed the Court that they had reached a friendly settlement in the above case. The applicant requested that the case be struck out of the Court's list of cases. On 7 and 15 February 2008 respectively the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case. They also submitted correspondence concerning other matters.

8. By letter dated 3 December 2007, the Registry invited the Government to clarify the conditional nature of the property transfer envisaged in the settlement agreement. By letter dated 14 January 2008, the Government explained, *inter alia*, that the transfer would have to be executed in the Republic of Cyprus which was outside their jurisdiction. This was sent to the applicant for information.

9. On 1 February 2008, the Court having changed the composition of its Sections (Rule 25 § 1), this case was assigned to the newly-composed Fourth Section.

THE FACTS

10. The first applicant is a private company, incorporated under Cypriot law and registered in Nicosia in 1986 (“the company”). The second applicant, a Cypriot national born in 1948 and living in Nicosia, is the director and major shareholder, and effectively owns and controls the company. For the purposes of this application, the second applicant was regarded as “the applicant” (see the judgment on the merits, cited above, § 21).

11. In April 1988 the company became the co-owner of a substantial amount of property by way of gift. The property was situated in the village of Tymvou, in the northern district of Nicosia, located in the “Turkish Republic of Northern Cyprus” (“TRNC”). It consisted of 51 plots of land with registration numbers A174, A194, A195, B245, B121, B238, B321, E262, E266, E268, E279, E291, E292, F221, F222, F301, F308, F314, F318, G102, G162, G193, G246, G288, G298, G299, G407, G411, G414, G415, G418, H17, H18, H26, H76, H87, H90, H98, H109, H112, H117, H130, H136, H144, H179, J12, J13, J32, J38, J46 and J55.

12. On 3 April 1996 the property was transferred by way of gift to the applicant. The applicant stated that he had been prevented by the Turkish armed forces from having access to the property and using and enjoying possession of it.

THE LAW

13. On 7 February 2008 the Court received the following declaration signed by the applicant:

“I, Michael Tymvios, the applicant, declare that I have reached agreement with the Government of Turkey according to the terms of a settlement dated 21 May 2007 which provides for the payment of one million United States dollars to the applicant and the exchange of property insofar as the exchange decision can be executed within the control and power of the authorities of the “Turkish Republic of Northern Cyprus”.

This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be payable within three months from the date of notification of the judgment by the Court pursuant to Article 39 of the European Convention on Human Rights. 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.

I accept the proposal and waive any further claims against Turkey in respect of the facts of this application. I declare that this constitutes a final resolution of the case.

This declaration is made in the context of a friendly settlement which the Government and I have reached.

I further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court's judgment.”

14. On 15 February 2008 the Court received the following declaration from the Government:

“I declare that the Government of Turkey have reached agreement with the applicant, Dr Michael Tymvios, according to the terms of a settlement dated 21 May 2007 which provides for the payment of one million United States dollars to the applicant and the exchange of property insofar as the exchange decision can be executed within the control and power of the authorities of the “Turkish Republic of Northern Cyprus”. This declaration is made in the context of a friendly settlement which the Government and the applicant have reached.

This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be payable within three months from the date of notification of the judgment by the Court pursuant to Article 39 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

15. The Court welcomes the agreement reached between the parties (Article 39 of the Convention) and takes note of the explanation given by the Government concerning the conditional nature of the agreement insofar as it concerned a possible exchange of property. It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court) and that it is equitable within the meaning of Rule 75 § 4 of the Rules.

16. The Court also notes that the applicant and the Government have made submissions concerning measures allegedly taken by the Government of Cyprus, an intervening party, against the applicant in the context of bankruptcy proceedings. Given the delay in the disposal of this case, which the Court regrets, it cannot justify any further adjournment. To the extent therefore that any allegations are made of interferences with property or other rights under the Convention and its Protocols, these would fall to be examined rather in an application against the respondent Government alleged to be responsible for any alleged violations of the provisions of the Convention or its Protocols and having due regard to the requirements of Articles 34 and 35 of the Convention. Further, insofar as the Court has received submissions from the Official Receiver, Ministry of Commerce, Tourism and Industry in the Republic of Cyprus drawing attention to the applicant's bankruptcy and questioning his ability to enter into any settlement or receive any compensation, it would only remark that the applicant's status as a bankrupt may be of relevance on a domestic level but does not affect the present application which was introduced validly under former Article 25 of the Convention and to which no objection was taken by the intervening Government concerning any lack of standing by the applicant to pursue his property claims.

17. Accordingly, the remainder of this case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the remainder of the case out of its list of cases;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 22 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President