



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

COURT (CHAMBER)

**CASE OF PINE VALLEY DEVELOPMENTS LTD AND OTHERS v.
IRELAND (ARTICLE 50)**

(Application no. 12742/87)

JUDGMENT

STRASBOURG

9 February 1993

In the case of Pine Valley Developments Ltd and Others v. Ireland*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mrs D. BINDSCHEDLER-ROBERT, *President*,

Mr L.-E. PETTITI,

Mr C. RUSSO,

Mr J. DE MEYER,

Mr S.K. MARTENS,

Mrs E. PALM,

Mr I. FOIGHEL,

Mr R. PEKKANEN,

Mr J. BLAYNEY, *ad hoc judge*,

and also of Mr M.-A. EISSEN, *Registrar*,

Having deliberated in private on 23 September 1992 and 1 February 1993,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE AND FACTS

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the Government of Ireland ("the Government") on 11 July and 11 September 1990, respectively. It originated in an application (no. 12742/87) against Ireland lodged with the Commission in 1987 by two companies registered in that State, Pine Valley Developments Ltd ("Pine Valley") and Healy Holdings Ltd ("Healy Holdings"), and an Irish national, Mr Daniel Healy.

2. By judgment of 29 November 1991 ("the principal judgment"), the Court held, *inter alia*, that Healy Holdings and Mr Healy (hereinafter together referred to as "the applicants") had been victims of discrimination contrary to Article 14 of the Convention, taken in conjunction with Article 1 of Protocol No. 1 (art. 14+P1-1), in that section 6 of the Local Government (Planning and Development) Act 1982 ("the 1982 Act") had retrospectively

* The case is numbered 43/1990/234/300. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

validated all planning permissions in the relevant category other than theirs (Series A no. 222, paragraphs 61-64 of the reasons and point 6 of the operative provisions, pp. 26-27 and 29).

The only outstanding matter to be settled is the question of the application of Article 50 (art. 50). As regards the facts, reference should be made to paragraphs 8-34 of the principal judgment (*ibid.*, pp. 8-17).

3. At the Court's hearing on 21 May 1991, counsel for the Government and the Delegate of the Commission both reserved their position on the claims for just satisfaction advanced by the applicants.

In the principal judgment, the Court therefore reserved the whole of this question and invited the Government and the applicants to submit, within the next three months, their written comments thereon and, in particular, to notify the Court of any agreement reached between them (paragraphs 67-68 of the reasons and point 8 of the operative provisions, pp. 28-29).

4. Following the failure of settlement negotiations and in accordance with the foregoing invitation and the President's directions, submissions and observations relating to the claims under Article 50 (art. 50) were filed by the applicants on 28 February, 19 March, 20 and 22 April and 30 June 1992, by the Government on 27 March, 10 April and 15 June 1992 and by the Delegate of the Commission on 10 April 1992. The materials furnished to the Court included valuations by chartered surveyors of the land owned by Healy Holdings, to which outline planning permission had initially been attached ("the Clondalkin site").

5. On 23 September 1992 the Court decided that there was no need to hold a hearing.

6. At the deliberations on 1 February 1993 Mr R. Ryssdal and Mr J. Pinheiro Farinha, who had sat to consider the merits of the case but were unable to be present on that date, were replaced by Mrs D. Bindschedler-Robert, who sat as President of the Chamber, and Mr S.K. Martens, substitute judge, respectively; Mrs Bindschedler-Robert in her turn was replaced by Mr R. Pekkanen, also a substitute judge (Rules 21 para. 5, 22 para. 1, 24 para. 1 and 54 para. 2).

AS TO THE LAW

7. Under Article 50 (art. 50) of the Convention,

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

The applicants claimed under this provision compensation for pecuniary damage and reimbursement of costs and expenses, together with interest. Mr Healy also sought compensation for non-pecuniary damage.

A. Pecuniary damage

8. The applicants claimed compensation for the pecuniary damage they had sustained by reason of the fact that the 1982 Act had not retrospectively validated the outline planning permission which had been granted in 1977 in respect of the Clondalkin site and had been declared by the Supreme Court in 1982 to be a nullity.

9. It was common ground between the applicants, the Government and the Delegate of the Commission that this was a proper case for an award of compensation for pecuniary damage. The applicants stated that they were not seeking to recoup the profits which they would have earned had they been able to develop the site; their claim was formulated on the basis that the loss to be made good to them was the difference between the values, on the relevant date, of the site with and without the outline planning permission. It was also common ground between the applicants and the Government that the relevant date in this connection was 28 July 1982, being the date on which the 1982 Act had entered into force. Whilst the Delegate of the Commission expressed reservations about the use of that date, the Court considers that it is not an inappropriate one for the present purposes.

10. The principal point of contention on this part of the case was the value which the Clondalkin site would have had in July 1982 if the outline planning permission granted in 1977 had still been in force. Relying on valuation reports by chartered surveyors, the applicants and the Government advanced in this connection figures of IR£2,200,000 and IR£550,000, respectively.

11. Faced with a difference of this magnitude, the Court has sought in the first place to extract from the material before it elements in respect of which there is no, or a lesser degree of, dispute. In doing so, it has noted the following.

(a) Pine Valley purchased the 22-acre - or, according to the Government, 21.5-acre - Clondalkin site in November 1978, in an arms-length transaction, for IR£550,000, that is to say at a price of approximately IR£25,000 per acre.

(b) A site of 4.5 acres, considered by the Government to be comparable to that of the applicants, was sold at public auction in June 1981 for IR£200,000, that is IR£44,444 per acre. Whilst a calculation cannot be made on a simple per acre basis, this example demonstrates that the period from 1978 to 1981 witnessed an increase in the value of properties for development. Since it was not disputed that the applicants' land was a prime

development site, there is no reason to suppose that by July 1982 its market value, with outline planning permission, would not have increased beyond the IR£550,000 obtaining in 1978. Indeed, the Government themselves estimated that if it had been capable of immediate development and if no abnormal costs had been involved (as to which points, see the next two subparagraphs), it would have been worth IR£1,600,000 in July 1982, that is approximately IR£73,000 per acre.

(c) The Government laid great stress on what they described as the "inherent defects" of the Clondalkin site, namely that it had an awkward shape, that access to it was by a narrow road over which the applicants had only a right of way and that it was not equipped with public water and sewage services. The applicants did not maintain that these points were factually incorrect, nor did they contest the quantum of the deductions which the Government suggested had to be made in order to arrive at an open-market value which took these drawbacks into account (IR£535,000); they pointed out rather, as regards the second and third of the defects, that the outline planning permission attaching to the land was not subject to any conditions as to the improvement of the access or the installation of public services. The Court, however, considers that these are matters which are relevant to an assessment of the open-market value of the site: a prospective purchaser would doubtless have taken into account any abnormal costs which he would have to incur in order to provide the development with appropriate facilities, such as access and services, even if the outline permission imposed no conditions to that effect.

(d) Although this was questioned by the applicants, the Government also relied on the fact that there would have been considerable delay in obtaining the requisite full planning approval and bye-law approval for the development of the site. The Court does not consider that those approvals could have been secured as rapidly as the applicants appear to suggest, since a purchaser would have had to decide on the precise type of development he wanted, have detailed plans prepared giving effect to such decision and finally have those plans approved by the planning authority. Furthermore, neither the Government nor the applicants referred in this context to the fact that the applicants' outline planning permission, had it been retrospectively validated by the 1982 Act, would have expired on 10 March 1984 and could not have been extended unless substantial works had already been carried out before that date (see the principal judgment, p. 10, para. 16). The resultant need for speedy action on the part of a developer was likely, in the Court's opinion, to have limited the circle of potential purchasers and, in consequence, the market value of the land.

(e) The applicants initially asserted that the July 1982 value of their site without the outline planning permission was IR£50,000, being the sum for which it was sold on the open market in 1988. However, they subsequently

accepted the Government's proposition that its value in July 1982 for agricultural or amenity purposes was IR£65,000.

(f) The applicants themselves admitted that, in assessing compensation on the basis suggested by them, a deduction of IR£13,500 should be made to cover the potential rental income from the property in the period from 1982 to 1988.

12. The Court finds itself unable to accept the arguments advanced by the Government on the following points.

(a) It does not consider that, in quantifying the damage sustained by the applicants, allowance should be made for the capital gains tax to which they would have been liable on a sale of the site or for the stamp duty which such a transaction would have attracted. This is because what has to be assessed, having regard to the manner in which the applicants' claim was formulated, is the value of the land in their hands, rather than the net proceeds which they would have received had they disposed of it.

(b) The Court is not satisfied that the Government have established grounds for the making of the deduction referred to in their final submission as "Defer for 4 years at 15% per annum: IR£590,000".

(c) The Court agrees with the Delegate of the Commission that no reduction should be made to reflect the fact that, in the principal judgment, it held that there had been no breach of Article 1 of Protocol No. 1 (P1-1) to the Convention: that is a matter that had no influence on the quantum of the damage flowing from the discrimination of which the Court found that the applicants had been victims.

13. The applicants submitted that the Court's award should include interest from the date of the violation of the Convention, namely 28 July 1982, on the ground that if compensation had been paid to them on that date, it would have earned interest since then.

14. The Court agrees with the Delegate of the Commission that interest should be paid. Since the applicants' claim is not based on loss of development profits, it is not persuaded by the Government's argument that to award interest would amount to providing compensation for property speculators. Nor does it share the Government's view that the applicants are estopped from claiming interest by reason of their failure to do so in the domestic proceedings, since it would have been open to the court of its own motion to award interest in those proceedings.

In connection with the claim for interest, the Court considers that it should have regard to the rates applicable to Irish court judgments; the commercial rates cited by the applicants appear to be more appropriate to a claim based on lost development profits.

15. Having regard to the foregoing and making an assessment on an equitable basis, the Court concludes that the applicants should be awarded a global sum, including interest, of IR£1,200,000 under this head.

B. Non-pecuniary damage

16. Mr Healy claimed a "very substantial", but unquantified, sum for non-pecuniary damage, to compensate him for the effects which the violation found by the Court had had on his personal circumstances, namely loss of status, prospects and enjoyment of life, inability to obtain employment, and bankruptcy. He left the assessment of the award to the Court's discretion.

The Delegate of the Commission considered that Mr Healy should receive some compensation under this head. The Government took the contrary view, on the ground that he had not established a clear causal connection between the violation and the deterioration in his circumstances. In the alternative, they maintained that an award of compensation for pecuniary damage, coupled with the declaratory relief afforded by the principal judgment, would suffice to meet the justice of the case.

17. The Court is unable to accept the Government's submissions. Even assuming that, as they suggested, Mr Healy's personal difficulties originated in problems encountered with other development projects with which he was involved, there is no reason to suppose that the inability to proceed with the Clondalkin development did not compound and aggravate those difficulties. The violation of the Convention therefore caused him non-pecuniary damage and, in the Court's view, the finding in the principal judgment does not of itself constitute sufficient just satisfaction therefor.

Making an assessment on an equitable basis, the Court awards Mr Healy IR£50,000 under this head.

C. Costs and expenses

18. The applicants sought reimbursement of legal costs and expenses totalling IR£449,415.11, this amount being made up as follows:

(a) costs incurred in Ireland after 28 July 1982, in proceedings in the High Court and the Supreme Court, together with interest: IR£42,655.11;

(b) costs referable to the proceedings in Strasbourg, including those relating to the application of Article 50 (art. 50): IR£406,760.

The Government disputed this claim, which they saw as "greatly inflated": in their view, a reasonable sum (inclusive of value-added tax) for both the domestic and the Strasbourg proceedings would be IR£80,455.97.

The Delegate of the Commission too found that the amount claimed was high, but he left it to the Court to assess a reasonable figure.

19. The Court has examined the matter in the light of the principles that emerge from its case-law.

It notes, in the first place, that it is not contested that the costs claimed were actually and necessarily incurred. The amount sought in respect of the domestic proceedings should, it finds, be reimbursed in full: the quantum of

fees and expenses cannot be regarded as unreasonable and the addition of interest is warranted (see, on the latter point, the *Observer and Guardian v. the United Kingdom* judgment of 26 November 1991, Series A no. 216, p. 38, para. 81).

On the other hand, the Court agrees that the claim in respect of the Strasbourg proceedings is excessive. Taking into account the amount paid to Mr Healy by the Council of Europe by way of legal aid in respect of fees and making an assessment on an equitable basis, the Court awards for this item IR£70,000, together with any value-added tax that may be due.

D. Interest on the Court's award

20. The applicants also sought interest on the sums awarded (at least, those for pecuniary damage and for costs) for the period between the date of the present judgment and the date of payment.

21. Neither the Government nor the Commission adverted to this claim. The Court does not consider it appropriate to accede to it in this instance.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that Ireland is to pay, within three months:
 - (a) to Healy Holdings Ltd and Mr Healy jointly the sum of IR£1,200,000 (one million two hundred thousand Irish pounds) for pecuniary damage, the sum of IR£42,655.11 (forty-two thousand six hundred and fifty-five Irish pounds and eleven pence) for domestic costs and expenses and the sum of IR£70,000 (seventy thousand Irish pounds), together with any value-added tax that may be due, for Strasbourg costs and expenses;
 - (b) to Mr Healy the sum of IR£50,000 (fifty thousand Irish pounds) for non-pecuniary damage;
2. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and notified in writing under Rule 55 para. 2, second sub-paragraph, of the Rules of Court on 9 February 1993.

Denise BINDSCHEDLER-ROBERT
President

Marc-André EISSEN
Registrar