AS TO THE ADMISSIBILITY OF

Application No. 23371/94
by Andreas LYSSIOTIS
against Cyprus

The European Commission of Human Rights (Second Chamber) sitting in private on 16 October 1996, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
L. LOUCAIDES
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA

Ms. M.-T. SCHOEPFER, 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 10 November 1993 by Andreas LYSSIOTIS against Cyprus and registered on 2 February 1994 under file No. 23371/94;

Having regard to :

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the Commission's decision of 6 September 1995 to communicate the application;

- the observations submitted by the respondent Government on 9 November 1995 and the observations in reply submitted by the applicant on 12 February 1996;

- the Commission's decision of 16 April 1996 to request further observations;

- the additional observations submitted by the respondent Government on 8 May 1996 and by the applicant on 22 May 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Cypriot citizen and a pensioner, born in 1923 in Famagusta and currently residing in Larnaca.

The facts of the case, as they have been submitted by the parties, may be summarised as follows:

On 28 March 1973 the applicant acquired a plot of land measuring

one and 3/4 acres. On 24 March 1977 the Ministry of Transport decided to expropriate one and 1/4 acres (1719 square metres) of the applicant's land in order to construct the Nicosia-Limassol highway (administrative act 234/24.3.77). On 9 January 1981 another 850 square feet (79 square metres) were expropriated (administrative act 10/9.1.91).

On 13 August 1983 the Land Registry Office of the Province of Limassol offered the applicant 4,200 Cyprus pounds by way of compensation. The applicant rejected this offer on 24 September 1983.

On 10 December 1985 a second offer of 3,880 pounds was made to the applicant, which he rejected as well.

On 4 September 1987 the Land Registry referred the case of the applicant, together with other similar cases, to the District Court (Eparhiako Dikastirio) of Limassol (reference No. 29/87).

On 20 November 1987 Mr. G. G., a lawyer practising in Cyprus, declared before the District Court that he would be representing the applicant in the proceedings. The applicant signed a power of attorney authorising G. G. to act on his behalf in the specific case.

On 17 June 1988 Law 84/88 was enacted providing for the recalculation of compensation awarded in expropriation cases. On 28 September 1988 an offer of 21,240 pounds was made to the applicant, which he accepted on 3 October 1988. The applicant was not, however, paid this sum, as the Republic lodged, on a date which has not been specified, an appeal before the Supreme Court (Anotato Dikastirio) challenging the applicability of the new law in cases of expropriation pending before the courts.

On 29 September 1989 the Supreme Court considered that the provisions of Law 84/88 did not apply in cases of expropriation pending before the courts. Following this decision, the applicant was informed on 18 November 1989 that the offer made to him on 28 September 1988 had no legal basis and was null and void. The District Court of Limassol would resume, as a result, the examination of case No. 29/87.

According to the Government, the proceedings before the District Court followed the course which is described below.

On 13 November 1990 G. G. was summoned to appear before the District Court of Limassol on behalf of the applicant at a hearing on 21 December 1990. On 21 December 1990 Mr. B. appeared before the District Court on behalf of the applicant, replacing G. G. The Court decided to adjourn the hearing until 22 February 1991.

At the hearing of 22 February 1991 the applicant was represented by Mr. I., acting on behalf of G. G. The Court decided to adjourn the examination of the case, insofar as it concerned the applicant and certain other persons, until 29 March 1991.

On 26 February 1991 G. G. entered a claim on behalf of the applicant. At the hearing of 29 March 1991 the applicant was not represented. G. G. was, however, present in his capacity as representative of certain other persons claiming compensation. The Court decided to adjourn until 15 May 1991.

At the hearing of 15 May 1991 the applicant was represented by Mr. K., acting on behalf of G. G. The Court decided to adjourn the examination of the case, insofar as it concerned the applicant and certain other persons, until 14 June 1991. At the hearing of 14 June 1991 the applicant was again represented by K., acting on behalf of G. G. The Court decided to adjourn the case until 27 September 1991. At the hearing of 27 September 1991 the applicant was represented by G. G. The Court decided to adjourn the case until

20 December 1991.

On 20 December 1991 the District Court of Limassol held another hearing at which the applicant was not represented. G. G. was, however, present in his capacity as representative of certain other persons claiming compensation. The Court decided to adjourn the examination of the case, insofar as it concerned the applicant, until 28 February 1992.

At the hearing of 28 February 1992 the applicant was not represented. The Court heard the case in his absence and decided to award him 8,696 pounds by way of compensation. On 10 August 1992 the Land Registry issued an order of payment for the above-mentioned sum in favour of the applicant.

The applicant claims that he was unaware of these developments. In a letter addressed to the Commission dated 28 July 1994 the applicant claims that "a year after he had received the letter of 18 November 1989 (informing him of the outcome of the proceedings before the Supreme Court and of the resumption of the proceedings before the District Court of Limassol) he went to the Registry of the District Court of Limassol. There he met a former judge, whom he knew by sight and the name of whom he would disclose to the Commission later, showed him the letter of 18 November 1989 and together they appeared before the Registrar who informed them that the case would be decided in Nicosia." In his comments on the Government's reply to the Rapporteur's request for information, the applicant claims that "a year after he had received the letter of 18 November 1989 he visited the Limassol Court Registrar accompanied by a lawyer, Mr. V, in order to be informed of the date of lawsuit No. 29/87. The reply he received was that the case was under investigation in Nicosia without explanation by which body."

The applicant further claims that in November 1991 he assigned his case to a lawyer practising in Nicosia, Mr. E. Two days later Mr. E. informed the applicant that he could not represent him in the particular case. Towards the end of 1992 the applicant claims to have received a cheque dated 17 August 1992 for 8,696 pounds allegedly with no cover letter, which he returned to the Limassol Land Registry on 20 January 1993.

In October 1993 the applicant claims to have contacted the Attorney General's Office, where he was informed that case No. 29/87 had been heard and that he could no longer appeal against the decision of the Provincial Court.

On 17 November 1993 the applicant wrote to the Ministry of Transport and Public Works complaining that he had not been invited to participate in the proceedings before the Provincial Court. By letter of 20 April 1994 the Ministry of Transport gave the applicant a detailed account of the history of the case. In the letter it is mentioned that the applicant was represented before the District Court by a lawyer from Larnaca, Mr. A. G. The surname of the latter is identical with the surname of G. G.

Upon receipt of this letter, the applicant wrote on 4 and 26 May 1994 to A. G. asking him to clarify his role in the proceedings. In his second letter the applicant refers to a telephone conversation during which an employee of A. G. confirmed to the applicant that A. G. "did not know anything" about the proceedings.

Relevant domestic law

Rule 14 of the Compensation Assessment Tribunal Rules of 1956 provides as follows:

> "If ... any party to a reference does not appear at (the) time and place (appointed for the hearing) the President or the

Tribunal may hear and determine the ... reference in his absence and may make such order as to costs as he or it thinks fit."

Order 33 Rule 5 of the Civil Procedure Rules, which apply mutatis mutandis by virtue of section 20 of the Compulsory Acquisition of Property Law of 1962, provides as follows:

"Any judgment obtained where one party does not appear at the trial may in a proper case be set aside by the Court upon such terms as may seem fit, upon an application made within 15 days after the trial."

Order 57 Rule 2 of the Civil Procedure Rules further provides as follows:

"A Court ... shall have the power to enlarge ... the time appointed by these rules, ..., upon such terms (if any) as the justice of the case may require."

COMPLAINTS

1. The applicant originally complained of a violation of his rights under Article 1 of Protocol No. 1 in that he had not been paid adequate compensation for the expropriation of his land.

2. In his observations in reply of 12 February 1996, the applicant further complained of a violation of Article 6 para. 1 of the Convention since he had not been heard in the determination of his civil rights and obligations.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 10 November 1993 and registered on 2 February 1994.

On 12 December 1994 the Rapporteur, acting under Rule 47 para. 2 of the Commission's Rules of Procedure, requested the Government of the Republic of Cyprus to inform him before 26 January 1995 whether the applicant or his lawyer were duly summoned to appear before the District Court of Limassol which decided on 28 February 1992 that the applicant should be awarded 8,696 pounds by way of compensation (reference No. 29/87) and whether the applicant was represented by an authorised representative in the proceedings.

A reply by the Government was submitted on 31 January 1995.

On 27 February 1995 the Rapporteur, acting under Rule 47 para. 2 of the Commission's Rules of Procedure, requested the Government of the Republic of Cyprus to provide him before 10 April 1995 with a copy of the summons by which the applicant or his lawyer were requested to appear before the District Court of Limassol and a copy of the court documents on the basis of which the Ministry of Transport and Public Works concluded in their letter of 20 April 1994 that the applicant was represented in the above-mentioned proceedings by Mr. A. G.

The Government submitted the information requested on 6 April 1995. The applicant submitted his comments on 18 May 1995.

On 6 September 1995 the Commission decided to communicate the application.

The Government's written observations were submitted on 9 November 1995. The applicant replied on 12 February 1996 after an extension of the time-limit fixed for this purpose.

On 16 April 1996 the Commission decided to request the parties to submit further information on the case-law of the domestic courts which would support their respective conclusions regarding the

prospects of success of an application under Order 57 Rule 2 to have the time-limit for filing an application under Order 33 Rule 5 extended.

The respondent Government submitted the information requested on 8 May 1996 and the applicant on 22 May 1996 after an extension of the time-limit fixed for that purpose.

THE LAW

The applicant complains of a violation of his rights under Article 1 of Protocol No. 1 (P1-1) in that he has not been paid adequate compensation for the expropriation of his land. He also complains of a violation of Article 6 para. 1 (Art. 6-1) of the Convention in that he was not heard in the determination of his civil rights and obligations.

The Government submit that the applicant has not exhausted domestic remedies in that he did not lodge an application under Order 33 Rule 5 of the Civil Procedure Rules to have the judgment of 28 February 1992 of the District Court of Limassol which fixed the amount of compensation set aside. Although the applicant claims that he was not informed in time of the above-mentioned judgment, he could have asked for an extension of the time-limit for filing such an application in accordance with Order 57 Rule 2 of the Civil Procedure Rules. The courts enjoy unfettered discretion insofar as extensions of time-limits are concerned. This discretion is exercised in the light of the circumstances of each case and in the interests of doing justice and avoiding injustice. A case where the advocate has failed to appear at the trial thus causing injustice to the case of his client is a classical example of a case where the national court will find that the justice of the case requires an extension of the time-limit for filing an application under Order 33 Rule 5. However, long delays in asking for an extension should be satisfactorily explained.

The applicant claims that he did not appeal against the judgment of 28 February 1992 of the District Court of Limassol in time because he had been given wrong information by the authorities about the state of the proceedings in November 1990 and had not learned about their outcome before October 1993. Given the length of time which had elapsed since the delivery of the judgment, it was highly unlikely that the court would extend the time-limit for the appeal.

The Commission recalls that, in accordance with Article 26 (Art. 26) of the Convention, it may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law". Moreover, in accordance with the Commission's case-law, where doubts exist as to the effectiveness of a domestic remedy, that remedy must be tried (No. 13699/88, Dec. 7.3.90, D.R. 65 p. 245).

The Commission notes that the applicant claims that he was first informed of the decision of 28 February 1992 of the District Court of Limassol in October 1993. However, even assuming that the applicant version of the facts is correct, the Commission considers that it has not been established that the applicant was at that time effectively barred from lodging an appeal. The applicant could have asked for an extension of the time-limit in accordance with Order 57 Rule 2 of the Civil Procedure Rules and nothing has been submitted which could lead to the conclusion that, in the particular circumstances of the case, such an application would have had no prospects of success.

It follows that the applicant has not complied with the rule concerning exhaustion of domestic remedies in Article 26 (Art. 26) of the Convention and that his application must be rejected in accordance with Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber