CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 30503/03
by Georgios ODYSSEOS
against Cyprus

The European Court of Human Rights (First Section), sitting on 23 March 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mr A. KOVLER
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 22 July 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Georgios Odysseos, is a Cypriot national who lives in Limassol. He is represented before the Court by Mr E. Efstathiou, a lawyer practising in Nicosia.

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

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.

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.

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

The evidence that was presented by the expert witnesses of the parties 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 their inclusion in the particular zone brought about a reduction in the value of the land for which he should be compensated. He thus assessed the value of the properties at 35,574 Cyprus pounds (CYP) for plot no. 148 and at CYP 147,166 for plots nos. 371 and 372 plus interest. On the other hand, the Government's expert compared the particular properties to properties within the same planning zone with the same legal and natural features. He therefore assessed the value of plot no. 148 at CYP 6,500 and of the two remaining plots at CYP 23,400.

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 no information is given however as to when he received this amount. The award corresponded to the amounts assessed by the Government.

The proceedings were completed on 7 April 2003 with an *ex tempore* decision issued by the district court rejecting the applicant's action. The court considered that on the basis of judicial precedence comparison between various immovable properties should be made between properties with the same legal and physical features otherwise the court could not take the valuation into account. The court noted that the applicant's 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. It considered that this method was not correct and consequently that it could not rely on such comparative sales for the purposes of determining the value of the applicant's properties. In these circumstances the court found that the applicant had not established his case and dismissed the action. The applicant was awarded legal and valuation costs.

The applicant did not proceed to lodge an appeal in view of the fact that the Supreme Court at the time had dismissed three appeals by other owners of land in the same area who had used analogous methods of valuation as that used by the applicant's expert for the determination of the value of their expropriated land (*Michael I. Charalambous v. Attorney-General of the Republic, appeal no. 10891, judgment of 21 December 2001*; *Theodoros Nikolaou v. Attorney-General of the Republic, appeal no. 11059, judgment of 13 September 2002*; *Elli Iordani Christophi v. Attorney-General of the Republic, appeal no. 11073, judgment of 20 February 2003*).

COMPLAINTS

1. The applicant complained under Article 6 of the Convention about the excessive length of the proceedings before the District Court of Limassol.

2. The applicant further complained about his property rights under Article 1 of Protocol No. 1. In particular he claimed that he had not been granted fair and equitable compensation in respect of the expropriation. In this respect, he maintained that the development restrictions imposed on his property had not been taken into account as an autonomous factor for the assessment of the compensation, in breach of both Articles 6 of the Convention and 1 of Protocol No. 1.

THE LAW

1. The applicant complained that the excessive length of the civil proceedings before the District Court of Limassol violates the reasonable time requirement under Article 6 of the Convention, which in so far as relevant 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..."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in

accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicant complained of a violation of his property rights under Article 1 of Protocol No. 1. In particular, he claimed that he had not been paid adequate compensation for the expropriation of his property. In this connection, and also invoking Article 6 of the Convention, he complained that the development restrictions imposed on his property had not been considered as an autonomous factor.

The Court considers that the latter part of the complaint falls to be examined only under Article 1 of Protocol No. 1, which provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

At the outset the Court notes that the applicant did not appeal against the decision of the district court. In this respect, the applicant argues that an appeal had no chance of success in view of the fact that the Supreme Court at the time had dismissed three appeals by other owners of land in the same area who had used analogous methods of valuation as that used by the applicant's expert for the determination of the value of their expropriated land. The Court however considers it unnecessary to determine whether the applicant has exhausted domestic remedies since his claim under Article 1 of Protocol No. 1 is in any event inadmissible for the reasons set out below.

The Court recalls that an interference with peaceful enjoyment of possessions must strike a "fair balance" between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 26, § 69). Compensation terms under the relevant legislation are material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it does not impose a disproportionate burden on the applicant. The taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under this provision (see *Malama v. Greece*, no. 43622/98, § 52, ECHR 2001-II, and *Platakou v. Greece*, no. 38460/97, § 57, ECHR 2001-I). That Article does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of "public interest" may call for less than

reimbursement of the full market value (see *The Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301-A, pp. 34-35, §§ 70-71; *Papachelas v. Greece* [GC], no. 31423/96, § 48, ECHR 1999-II).

In the particular circumstances of the instant case, the Court finds no indication that the District Court of Limassol failed to consider the arguments put forward by the applicant's expert as regards the criteria to be used for estimating the market value of the expropriated land. The Court observes the expert witnesses of the parties used a different basis of comparison for the assessment of the market value of the property, resulting in a substantial difference between the sums proposed as compensation. It is clear from the district court's decision that following an examination of the evidence submitted by the experts, that court considered that the method used by the applicant's expert, in particular the comparative sales used for assessing the market value of the land, could not be accepted in view of the fact that the determination of the value of the property could not be made on the basis of comparative sales of properties situated in other planning zones with different building restrictions. The court thus found that it could not accept the valuation method adopted by the applicant's expert and that the applicant had not established his case.

Having regard to all the foregoing factors and bearing in mind the wide margin of appreciation which Article 1 of Protocol No. 1 affords national authorities, the Court finds that, in the circumstances, the district court managed to strike a fair balance between the general interest of the community and the protection of the applicant's property rights. It does not therefore consider that the burden borne by the applicant was disproportionate. In this connection, the Court further reiterates its findings in the cases of *Nikolaou v. Cyprus* ((dec.), no. 10240/03, 12 January 2006), *Pavlou v. Cyprus* ((dec.), no.13010/03, 12 January 2006) and *Christophi v. Cyprus* ((dec.), no. 24612/03, 12 January 2006).

Having regard to the above, the Court considers that this complaint does not disclose any appearance of a violation of the Convention.

It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of proceedings under Article 6 § 1;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President