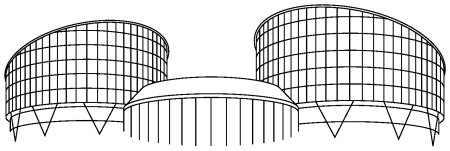

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MICHAEL THEODOSSIOU LTD. v. CYPRUS

(Application no. 31811/04)

JUDGMENT
(Just satisfaction)

STRASBOURG

14 April 2015

FINAL

14/07/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Michael Theodossiou Ltd. v. Cyprus,

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

Guido Raimondi, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, Section Registrar,

Having deliberated in private on 24 March 2015,

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

PROCEDURE

1. The case originated in an application (no. 31811/04) 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 registered company, Michael Theodossiou Ltd ("the applicant"), on 4 August 2004.

2. The case concerned the compulsory purchase of the applicant's property in the seaside area of Limassol. The decision to acquire the property was taken in July 1972 but ownership was not transferred, nor compensation paid, until January 1995. In accordance with domestic law on compulsory acquisition, the level of compensation was determined by reference to the value of the property in 1972 rather in 1995.

3. In a judgment delivered on 15 January 2009 ("the principal judgment"), the Court held that there had been a delay in the proceedings, and responsibility for that delay lay more with the acquiring authorities than with the applicant. The relevant domestic rule concerning determination of compensation, which did not allow for compensation for the excessive delay between notification of the acquisition and payment of compensation, was absolute. This imposed a disproportionate burden on the applicant. Accordingly, the Court found that there had been a violation of Article 1 of Protocol No. 1 to the Convention (see *Michael Theodossiou Ltd v. Cyprus*, no. 31811/04, §§ 94 and 95 and point 3 of the operative provisions, 15 January 2009).

4. The Court also found that the length of the last set of the proceedings in the case (approximately 11 years and 7 months for two levels of jurisdiction) was excessive and failed to meet the "reasonable time" requirement of Article 6 § 1 of the Convention. It therefore also found a

violation of that article (*ibid*. §§ 53–56 and point 2 of the operative provisions).

5. Under Article 41 of the Convention the applicant sought pecuniary damage to reflect the 1995 market value of the property, less the compensation it had been paid. It also sought interest on that sum, to run from 1995 to the date of payment. Finally, it sought non-pecuniary damage in respect of the violation of Article 6 § 1 of the Convention.

6. Since the question of the application of Article 41 of the Convention was not ready for decision at the time of its principal judgment, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.* § 101 and point 4(c) of the operative provisions). The applicant and the Government each filed observations.

THE LAW

7. 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. Pecuniary damage

1. The parties' submissions

(a) The applicant

8. The applicant submitted that the amount of pecuniary damage could be calculated on the basis of either: (i) the 1994 market value, less the amount actually paid in compensation; or (ii) the market value of property on the date of this Court's principal judgment (15 January 2009), less the amount actually paid in compensation. In both cases, interest should also be paid at the applicable statutory rate for compulsory acquisitions in Cyprus, which was 9% per annum for the applicable period.

9. For the first method, the applicant submitted that, in late 1994, it had agreed with the domestic authorities that the value of the property was CYP 2,150,000 (paragraph 21 of this Court's principal judgment). The total compensation paid in the course of the domestic proceedings was CYP 289,721 (CYP 277,994.51 on 16 January 1995 and CYP 11,726.25 on 12 October 2006: see paragraphs 20 and 26 of this Court's principal judgment). When the total compensation awarded was deducted from the

1994 market value and then the 9% statutory rate of interest applied to the remainder, the applicant submitted that the total sum it would have been entitled to receive on 15 January 2009 was CYP 4,227,546.

10. For the second method, the applicant submitted a report from a chartered surveyor which found that the value of the property on 15 January 2009 was [2]EUR 42,000,000. This would be an appropriate sum to award given that, if the first method were applied, this would lead to an award of only 18% of the 2009 value of the land, making it impossible for the applicant to purchase property of comparable value to the property it had lost through the compulsory acquisition. There was support for the principle that present day values should be used in the Court's judgment in *Serghides and Christoforou v. Cyprus* (just satisfaction), no. 44730/98, § 27, 12 June 2003.

11. As regards the Government's submission (see paragraph 13 below), that applicant was partly responsible for the delay in the proceedings, the applicant submitted that this submission had been considered and rejected by the Court in its principal judgment (see paragraph 94 of that judgment). Finally, and contrary to the Government's submission (see again paragraph 13 below), the Court's discretion to award interest could not be constrained by reference to national legislation.

(b) The Government

12. The Government accepted that the 1994 market value of the property was CYP 2,150,000 but did not accept either of the applicant's two methods for calculating just satisfaction.

13. In respect of the first method, they submitted that the applicant had a share of responsibility for the delay in the completion of the compulsory acquisition. Interest should not be paid from 1995 until date of payment: under national legislation, statutory interest was only paid to reflect any increase in the value of the property from the time of notification of acquisition to the date of payment of compensation. In 1995 the applicant had already been paid interest on the 1972 value of the property: it had not therefore sustained any pecuniary damage in the form of loss of interest.

14. In respect of the second method (using the current rather than 1995 market value of the property), any increase in the value of the property after compulsory acquisition was not a loss sustained by the applicant and was not causally related to the violation found by the Court. *Serghides and Christoforou*, cited above, could be distinguished on the basis that, in that case, the applicants had been deprived of property without any compensation being paid: their loss was therefore the value of the property at the time of the Court's judgment in their case. In the present case, the applicant had been paid compensation: the Court had only found a violation on the basis that the amount paid was not reasonably related to the value of

the property at the time of acquisition: therefore, the value of the property at the time of the Court's judgment was immaterial.

2. The Court's assessment

15. The Court begins by observing that there is no basis in its case-law for the second method of calculating pecuniary damage put forward by the applicant. The compulsory acquisition of the applicant's property, completed by its transfer in January 1995, was a lawful expropriation: the violation of Article 1 of Protocol No. 1 which the Court found in its principal judgment was based on the fact that amount of compensation paid was not reasonably related to the value of the property at that time. In such a case, any Article 41 award is limited to the payment of appropriate compensation which should have been awarded at the time in question, not any loss of income in respect of any subsequent period (see *Vistiņš and Perepjolkins v. Latvia* (just satisfaction) [GC], no. 71243/01, § 34, ECHR 2014).

16. Therefore, the correct approach is to take as a starting point the value of the property in January 1995. For all practical purposes, this can be taken as the agreed market value of the property in late 1994. This is the first method put forward by the applicant and it is consistent with *Vistiņš and Perepjolkins*, cited above, and with the Grand Chamber's judgments in *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, § 105, 22 December 2009 and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 255-259, ECHR 2006-V. There is nothing in the Government's submissions which would persuade the Court to depart from this approach. In light of this, for the purposes of Article 1 of Protocol No. 1, there is no reason to consider which party was primarily responsible for the delays in the domestic proceedings: this has no direct bearing on whether the compensation awarded at the end of those proceedings had any reasonable relation to the value of the property at the time of the actual compulsory acquisition. Finally, as regards the Government's submissions on interest, the Court does not find any basis for departing from its standard approach in Article 41 cases of adding interest to any sums awarded.

17. Accordingly, applying the approach set out in *Vistiņš and Perepjolkins*, *Guiso-Gallisay* and *Scordino (no. 1)*, it is necessary for the Court, in determining the amount of pecuniary damage to award, to consider the following five steps:

(i) to determine the full market value of the property at the time of the actual compulsory acquisition;

(ii) to consider whether that pursued any legitimate objectives of public interest which might call for less than reimbursement of the full market value of the property (*Scordino (no. 1)*, §§ 256 and 257);

(iii) to deduct from the value of the land the amount of compensation already paid at the domestic level (*Vistiņš and Perepjolkins*, § 40);

(iv) to adjust that sum to offset the effects of inflation (*ibid.*, § 41); and

(v) to award interest on the capital sum (*ibid.*, § 42).

18. As regards step (i), the market value of the property in late 1994 was agreed to be CYP 2,150,000. Ownership was transferred on 16 January 1995. The late 1994 value is therefore the appropriate starting point in this case.

19. For step (ii), the Government in their submission have not drawn the Court's attention to any legitimate objective of public interest which would call for less than reimbursement of the full market value of the property and the Court itself does not find any such objectives. The amount to be reimbursed therefore remains CYP 2,150,000.

20. For step (iii), the amount of compensation at the domestic level was CYP 289,721 (see paragraph 9 above). Deducting that figure from CYP 2,150,000 leaves CYP 1,860,279.

21. For step (iv), the Cypriot inflation rate in the period 16 January 1995 to 15 January 2009 was approximately 48.8%. Applying that percentage, the above sum of CYP 1,860,279 should be increased to CYP 2,768,095.

22. For step (v), the statutory interest for that period was on average 7.4% per annum. The period from 16 January 1995 to 15 January 2009 was fourteen years. Thus, in respect of that fourteen-year period, interest of CYP 1,927,249 should also be paid to the applicant.

23. Adding these figures gives CYP 4,695,344. Converted into euros, this is EUR 8,022,472. Thus, at the date of the Court's principal judgment the award of pecuniary damage would have been EUR 8,022,472. Given the passage of time since the principal judgment, and ruling on an equitable basis, the Court considers that the final sum awarded to the applicant should be EUR 8,750,000.

B. Non-pecuniary damage

24. The applicant claimed CYP 100,000 in respect of non-pecuniary damage in respect of the delay in the domestic proceedings and the eventual compulsory acquisition of its property. This, in its view, reflected the frustration caused to the company (a family company) by the length of the domestic proceedings and the further frustration at not being able to develop the property during the time the proceedings were pending.

25. The Government submitted that the Court's finding of violations of Article 6 of the Convention and Article 1 of Protocol No. 1 constituted sufficient just satisfaction.

26. The Court accepts that the applicant has suffered non-pecuniary damage resulting from the protracted length of the domestic proceedings and eventual compulsion acquisition of the property. Taking into account the circumstances of the case and making its assessment on an equitable

basis, the Court awards the applicant a total sum of 6,400 euros (EUR) under this head.

C. Costs and expenses

27. The applicant company claimed CYP 22,342 for costs and expenses incurred in all of the proceedings before the domestic courts concerning this property, plus an annual interest rate of eight per cent, the rate applicable under domestic law. It further claimed CYP 15,000 for costs and expenses incurred in the present proceedings. Finally, it claimed the EUR 5,894 in respect of the report from a chartered surveyor valuing the property in 2009 (see paragraph 10 above).

28. The Government contested these claims. They submitted that, to the extent that applicant's claims covered domestic proceedings other than those proceedings in respect of which the Court had made a finding of a violation of the Convention, the applicant was not entitled to recover its costs and expenses. The Government also submitted that the applicant's claims were not sufficiently substantiated and there was no proof that they had actually been incurred. Concerning the costs and expenses incurred present proceedings before this Court, the Government accepted that those were recoverable by way of just satisfaction provided they were actually and necessarily incurred.

29. As regards the costs and expenses incurred in the domestic proceedings, the Court recalls that its principal judgment only concerned the civil proceedings which began before the District Court of Limassol on 15 February 1995 and ended with the Supreme Court's judgment of 19 March 2004. The remainder of the domestic proceedings fell outside the Court's temporal jurisdiction (see paragraph 51 of the principal judgment). Accordingly, only the costs and expenses incurred in those proceedings, CYP 13,722, are recoverable. The Court considers that these costs and expenses were actually and necessarily incurred and are reasonable as to quantum. They should therefore be met in full. Accordingly, it awards EUR 23,445 under this head.

30. As regards the costs incurred in the proceedings before it, the Court notes that this part of the applicant's claim has not been itemised and that the applicant has not provided any relevant supporting documents. Therefore, the Court finds that this part of the applicant's claim for costs must be dismissed. Lastly, as regards the EUR 5,894 for the chartered surveyor's report, given that pecuniary damage has been calculated on the basis of the late 1994 market value of the property and not the 2009 market value stated in the report, Court finds that these expenses was not necessarily incurred. This part of the applicant's claim must also be dismissed.

D. Default interest

31. The Court considers it appropriate that the default interest rate 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. *Holds*:
   (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 8,750,000 (eight million, seven hundred and fifty thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 6,400 (six thousand, four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 23,445 (twenty three thousand, four hundred and forty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Guido Raimondi
Registrar	President