SECOND SECTION

CASE OF SERGHIDES AND CHRISTOFOROU v. CYPRUS

(Application No. 44730/98)

JUDGMENT
(Merits)

STRASBOURG

5 November 2002

FINAL

05/02/2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Serghides v. Cyprus,

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

Mr J.-P. COSTA, *President*,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mrs A. MULARONI, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 22 May 2001 and 8 October 2002,

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

PROCEDURE

1. The case originated in an application (No. 44730/98) against the Republic of Cyprus 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 two Cypriot nationals, Mrs Loukia Serghides and her daughter, Mrs Amaryllis Christoforou, on 17 July 1998.

2. The applicants were represented before the Court by Mr G. Savvides, a lawyer practising in Limassol. The Cypriot Government ("the Government") were represented by their Agent, Mr A. Markides, Attorney-General of the Republic of Cyprus.

3. The applicants alleged a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11.

5. The application was allocated to the Third 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 of the Rules of Court.

6. On 22 May 2001 the Chamber declared the application partly admissible as regards the complaints of the first applicant only. Hereafter the Court will only refer to Mrs Serghides as "the applicant".

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. In 1959, the applicant acquired freehold ownership of plot 565, Nicosia, with a frontage on Jason Street, which is now called Georgios Grivas Digenis Avenue. She was also issued with a Certificate of Registration of Immovable Property by the Land Registry Office, Registration No. B662, dated 28 April 1959. The surface area of plot 565 was 23,488 square feet. On 16 September 1959 the applicant leased plot 565 to Mobil Oil Cyprus Ltd. On 7 October 1959 Mobil, in its capacity as the representative of the applicant, applied to the municipality of Nicosia and obtained a building permit for the construction of a petrol-station, a car-wash and other ancillary structures. In 1969 the lease was renewed until September 1973, with the option to extend until September 1977. In paragraph 1 of the third page of the lease, the rented property was described as being "situated at Grivas Digenis Avenue on plot 565". Paragraph 5(e) of the lease provided that the landlord authorised the tenant as her agent to sign all applications concerning the plants and works which Mobil would construct, reconstruct, operate and continue to operate on the plot, and generally to do all things necessary on her behalf.

9. On 30 March 1973, Notice No. 612 was published in the Official Gazette of the Republic No. 1002, pursuant to the Streets and Buildings Regulation Law, Cap. 96, by the Municipal Committee of Nicosia, aimed at widening Grivas Digenis Avenue.

10. According to the text of paragraph 1 of the Notice, the affected plots were the following: all plots with frontage on a certain specified part of the Avenue (that is, the part of the Avenue between Prodromos Street and Th. Dervis Street) and certain plots with frontage on both the Avenue and other side roads. (The numbers of these "corner plots" were expressly set out in the Notice.)

11. However, the Notice did not mention that plot 565 was part of the land taken for the widening of the street.

12. The Notice provided that any objection against the widening scheme should be raised within seventy-five days of the publication of the Notice in the Official Gazette.

13. On 11 July 1973, Mobil filed with the Municipality an application for a building permit to make minor alterations to a station built in 1959, the pumps' shelter and an oil ditch. The distance of the new construction from the newly aligned Grivas Digenis Avenue was more than 10 feet, the distance required by Regulation 6(3) of the Streets and Buildings Regulations.

14. Upon receipt of the application, the Municipality addressed to the applicant, through her duly authorised agent, a letter dated 24 July 1973. It was expressly provided in that letter that the plans of the street-widening scheme relating to the Grivas Digenis Avenue should be taken into account. A copy of the official plan which showed the effect of the street-widening scheme was attached to the letter.

15. According to the Government neither the applicant nor Mobil protested.

16. On 27 March 1978 the building permit was issued. By letter of 28 March 1978, the Municipality of Nicosia requested the Office of the Land Registry and Survey to register as part of the public domain, by virtue of section 13 (1) of the Streets and Buildings Regulation Law, Cap. 96, the part of plot 565 affected by the street-widening scheme. At some time between 1978 and 1979, the District Land Registry Office of Nicosia registered the disputed area of 2,060 square feet as part of Grivas Digenis Avenue.

17. According to the applicant, the Government Survey Plan and the applicant's title were amended without anyone notifying her. In the Land Register, the ceding of the disputed area to the road was described as follows : "By purchase from the Government after compulsory acquisition + By grant. A public road. Fees: gratis". The applicant alleges that she was never notified about this amendment of the Register which contains a false declaration. Moreover, Mobil was never notified, as no mention of the expropriation was made in the conditions attached to the building permit which had been granted. Even the letter sent to Mobil on 24 July 1973 only stated that the street-widening scheme would have to be taken into consideration, giving no specific indication that the disputed area would be compulsorily ceded to the road.

18. Although the street-widening plan was made in 1978, the actual widening was not effected until September 1989. On 5 September 1989 Notice of Acquisition No. 1391 was published in Gazette No. 2439. Again, however, the applicant's plot did not appear to be affected. According to the Government, this was due to the fact that the part of the plot affected by the street-widening scheme had already become part of the street through the earlier procedure, pursuant to sections 12 and 13 of the Streets and Buildings Regulation Law, Cap. 96.

19. The applicant claims that the first time she became aware of the situation was after receiving a Government Survey Plan on 4 September 1989 which she had requested from the Land Registry for the purpose of filing an objection to taxes imposed on some of her immovable property.

20. As the original 1959 registration certificate for plot 565 was lost, the applicant requested a further official copy, which she received on 30 December 1992. However, the certificate had been changed in relation to the surface area of the plot and contained the declaration – "Mode of Acquisition: By virtue of purchase by the

Government after Compulsory Acquisition and by virtue of cession to the public road".

21. On 17 November 1989 the applicant lodged an application with the Supreme Court of Cyprus, sitting at first instance, against both the Municipality of Nicosia and the Republic. She asked the court to declare the Land Registry's Office decision to take away 2,060 square feet of her land, as well as the decision to declare that piece of land to be part of a public road, void and without any legal effect. The applicant invoked Article 23 (2) and (4) of the Constitution (see Relevant Law below).

22. On 22 January 1990 the application was fixed for directions before the Supreme Court on 16 March 1990. On 23 January 1990 the Republic filed its opposition. On 16 March 1990 the court directed the Municipality to file its opposition by 23 April 1990. On that date as well as on 15 May 1990 and 11 June 1990, the Municipality applied for consecutive extensions. The applicant's lawyer stated on each occasion that he did not object. On 20 June 1990 the Municipality filed its opposition. On 19 September 1990 the applicant filed her observations. On 6 December 1990 and 8 February 1991 the Republic and the Municipality applied for an extension of the time-limit for filing their observations in reply. These observations were filed on 14 April 1991 and 8 May 1991. On 12 June 1991 and 13 September 1991 the applicant's lawyer was granted two further extensions for submitting additional observations.

23. On 22 January 1992 the Supreme Court reserved its decision, which was not rendered until 2 February 1993.

24. On 8 December 1992 the applicant transferred the ownership of plot 565 to her children by way of donation. According to the relevant Declaration of Transfer submitted by the Government, she transferred the totality of her legal title in plot 565 without any reservation whatsoever. This fact was not brought to the knowledge of the Supreme Court by the applicant.

25. According to the applicant, as she was seriously ill, she transferred the ownership of 21,428 square feet of land out of the total 23,488 square feet which she had originally held in 1959, with a half share to each to her two children – Mrs A. Christoforou and Dr G.A. Serghides. The remaining 2,060 square feet which she did not transfer is the disputed area. The entry of this transfer in the Land Registry Office appears to have been made on 23 February 1993.

26. On 2 February 1993, the Supreme Court rejected the application as out of time, it having been filed more than seventy-five days after Notice No. 612 had been published in the Official Gazette. It held that the letter of 24 July 1973 to Mobil from the Municipality constituted sufficient notice. It further held that the acts and/or actions of the Municipality of Nicosia and the Republic of Cyprus as regards the expropriation of 2060 square feet of the applicant's land were not executory administrative acts, and thus could not be annulled by virtue of Article 146 of the Constitution. It concluded that the street-widening scheme did not amount to a deprivation of property but only to a restriction on property having regard to the total surface area of the property and the affected land.

27. On 9 March 1993, the applicant filed an appeal on points of law with the Supreme Court.

28. On 5 September 1996 the parties were notified by the Registrar that the appeal was fixed for hearing on 12 December 1996. On that date the lawyer for the Municipality applied for an adjournment of the hearing, to which the applicant's lawyer did not object. On 20 January 1997 the Supreme Court adjourned the hearing for want of time. On 3 April 1997 the hearing commenced but was not completed. On

15 May 1997 then on 1 July 1997 the hearing was further adjourned upon applications made by the lawyers of the applicant and the Municipality respectively. The hearing was completed on 10 September 1997 and judgment was reserved.

29. On 27 February 1998 the Supreme Court dismissed the appeal on a procedural point, without examining the merits of the case. It held that, as the applicant had transferred her property, she no longer had *locus standi* in respect of the land taken by the Municipality in 1978.

30. In neither of the procedures before the Supreme Court did the applicant ever contend that she had had no notice of the publication of the street-widening scheme that affected her property.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. The Constitution

31. The relevant Articles of the Constitution provide as follows:

Article 23

"(1) Every person, alone or jointly with others, has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such a right. The right of the Republic to underground water, minerals and antiquities is reserved.

(2) No deprivation or restriction or limitation of any such right shall be made except as provided in this Article.

(3) Restrictions or limitations which are absolutely necessary in the interests of public safety or public health or public morals, or town and country planning or the development and use of any property for the promotion of the public benefit or for the protection of the rights of others, may be imposed by law on the exercise of such a right.

Just compensation shall be promptly paid for any such restrictions or limitations which materially decrease the economic value of the property; in case of disagreement, such compensation is to be determined by a civil court.

(4) Any movable or immovable property or any right over or interest in any such property may be compulsorily acquired by the Republic, or by a municipal corporation or by a commune for educational, religious, charitable or sporting institutions, bodies or establishments within its competence and only from the persons belonging to its respective community, or by a public corporation or a public utility body on which such a right has been conferred by law and only

(a) for a purpose which is to the public benefit and shall be specially provided by a general law for compulsory acquisition which shall be enacted within a year from the date of the coming into operation of this Constitution;

(b) when such purpose is established by a decision of the acquiring authority and made under the provisions of such law stating clearly the reasons for such acquisition;

(c) upon payment in cash and in advance of just and equitable compensation, to be determined in case of disagreement by a civil court."

Article 35

"The legislative, executive and judicial authorities of the Republic shall be bound to secure, within the limits of their respective competence, the efficient application of the provisions of this part."

Article 146

"(1) The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a claim made to it on a complaint that a decision, an act or omission of any organ, authority or

person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such an organ or authority or person.

(2) Such a claim may be made by a person whose existing legitimate interest, which he has either as a person or by virtue of being a member of a community, is adversely and directly affected by such a decision or act or omission.

(3) Such a claim shall be made within seventy-five days of the date when the decision or act was published or not published and, in case of an omission, when it came to the knowledge of the claimant.*"*

2. The Streets and Buildings Regulation Law, Cap. 96 (as amended)

32. The relevant Sections of this law provide as follows:

Section 2

"In this Law

alteration, addition or repair, when used with reference to buildings, means any structural alteration, addition or repair whereby any dimension of such building is altered ...

building means any construction, whether of stone, concrete, mud, iron, wood or other material and includes any pit, foundation, wall, roof, chimney, veranda, balcony, cornice or projection or part of a building, or anything affixed thereto, or any wall, earth bank, fence, paling or other construction enclosing or delimiting or intended to enclose or delimit any land or space."

Section 3 § 1

"No person shall

(a) lay out or construct a street;

(b) erect, or suffer or allow to be erected a building or demolish or reconstruct or make any alteration, addition or repair to any existing building, or suffer or allow any such demolition or construction or any such alteration, addition or repair to be made;

(c) lay out or divide any land... into separate sites,

(d) divide any building ... into separate tenements;

(e) start to do any of works or matters herein-before set out

without a permit first obtained from the appropriate authority as provided in subsection (2)."

Section 12

"(1) Notwithstanding any provision contained in this Law, a competent authority may, with the object of widening or straightening any street, prepare or have prepared plans showing the width of such a street and the direction that it shall take.

(2) When any plans have been prepared under subsection (1), the competent authority shall deposit such plans in its office and shall also have a notice published in the Gazette and in one or more local newspapers and deposited in its office, open to inspection by the public at all reasonable times, for a period of seventy-five days from the date of the publication of the notice in the Gazette.

(3) At the expiry of the period set out in subsection (2), the plans shall, subject to any decision of the Supreme Court after a claim is filed as provided for in section 18 of this law, become binding on the competent authority and on all persons affected thereby and no permit shall be issued by the authority save in accordance with such plans."

Section 13

"(1) Where a permit is granted by a competent authority and such permit entails the new alignment of any street, in accordance with any plan which has become binding under section 12

of this law, any space between such alignment and the old alignment, which is left over when a permit is granted, shall become part of that street without the payment by the authority of any compensation whatsoever:

If it is established that hardship would be caused if no compensation would be paid, the authority shall pay such compensation as may be reasonable having regard to all the circumstances of the case.

(2) When a permit is granted under subsection (1), the District Lands Office shall, upon application by any interested party, cause the necessary amendments to the relevant registrations to be effected and the amended registration shall be held final notwithstanding that any certificate relating thereto remains unaltered."

33. On 25 June 1976 the Supreme Court held that section 12 of the Streets and Buildings Regulation Law, Cap. 96, was not contrary to Article 23 of the Constitution, because it resulted only in the imposition of restrictions or limitations on the right of property and, particularly, on the use of such property for the purposes of building development, which were absolutely necessary in the interests of town and country planning within the meaning of Article 23 (3) of the Constitution (Neophytos Sofroniou and Others v. the Municipalty of Nicosia and Others judgment of 25 June 1975).

34. By a judgment of 23 May 1997 in the case of Kyprianides and Others v. the Municipality of Nicosia, the Supreme Court ruled that no claim for damages could be introduced when the disputed area was less than 15% of the original area. This judgment was subsequently confirmed in the case of the Attorney General v. F. Iacovides (Civil Appeal No. 9965, judgment of 29 September 1998).

35. As regards section 12(3), the Government affirm that the publication of such a scheme does not result in the acquisition by the competent authority of the part of the property affected thereby. It merely imposes restrictions and limitations upon future plans for the development of such property. If an application is made for the issue of a building permit in relation to such property, the permit must be in accordance with the plans of the street-widening scheme. The provisions of section 13 come into play in the event of the issue of a building permit. Then the affected part of the property becomes part of the street.

36. The Government contend that it follows that in the present case the alleged expropriation of 2,060 square feet of the applicant's land was not brought about by any administrative act or decision of the competent authority but by operation of law. The relevant statutory provisions operated automatically as soon as the building permit was issued, that is on 27 March 1978. The procedure that followed for the registration of the area was not an executory administrative act but merely an act of implementation because the said area had already become part of the street on the date on which the permit was issued.

3. The Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 (as amended)

37. The relevant sections of this Law provide as follows:

Section 2

"In the present Law 'owner' means the person entitled to be registered as the owner of any immovable property whether he is actually registered or not."

Section 40 § 2

"No transfer or voluntary charge affecting any immovable property shall be made in the District Lands Office by any person unless he is the registered owner of such property ..."

Section 50

"The area of land covered by a registration of title to immovable property shall be the area of the plot to which the registration relates in any Government Survey Plan or any plan made to scale by the Director:

Provided that where the registration cannot be related to any such plan, the area of land concerned shall be that to which the holder of the title may be entitled by adverse possession, purchase or inheritance."

Section 56

"From and after the date of the coming into operation of this Law, every registration made and every certificate issued in connection with any transfer of land or building, or any devolution thereof by inheritance, shall be deemed to include all immovable property connected therewith to which the transferor or deceased was entitled."

4. Law (No. 15 of 1962) on the compulsory acquisition of property for public benefit purposes

38. Section 4 of this law provides as follows:

"Where any property is required to be compulsorily acquired for the purpose of a public benefit, the acquiring authority shall cause a notice of the intended acquisition in the form set out in the Schedule hereto ... to be published in the official Gazette of the Republic, containing a description of the property intended to be acquired, stating clearly the purpose for which it is required and the reasons for the acquisition, and calling upon any person interested in such property to submit to such authority within a specified time, being not less than two weeks from the date of the publication thereof, any objection which he may wish to raise to such acquisition ..."

5. Procedural Regulations for the Prompt Issue of Court Judgments of 1986

39. The relevant regulations provide as follows:

Regulation 3

"(a) Judgments are delivered as soon as possible after the end of the proceedings and cannot be reserved for a period longer than six months.

(b) If the Court fails to comply with the provisions of sub-paragraph (a), any concerned party may apply to the Supreme Court according to Regulation 5."

Regulation 4

"If a decision which has been reserved ... [or] continues to be reserved for a period which exceeds nine months, the case is *ipso jure* fixed before the Supreme Court for the delivery of the order which is necessary in the circumstances, pursuant to Regulation 5 of the Regulations."

Regulation 5

"In considering the application lodged according to Regulation 3, the Supreme Court may ...

(b) make an order for the issue of the reserved judgment by a specific date and, in case of non-compliance, order a re-hearing by another court."

6. The Supreme Constitutional Court Rules, 1962

40. Regulation 5(1) provides as follows:

"The respondent may within twenty-one days from the service of the application, file with the registry and serve at the applicant's address for service an opposition thereto ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

41. The applicant alleges a violation of Article 1 of Protocol No. 1 which reads 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."

42. The Government maintain that the applicant was not deprived of her property within the meaning of Article 1 of Protocol No. 1. The interference in question amounted to a measure of control of the use of property. The legal effect of the publication of the street-widening scheme was merely to impose a restriction upon any future development of plot 565. The restriction could only take effect if and when the applicant applied for a permit for the development of that plot. In such a case, the development would not be unfettered; the affected part of the plot would become part of the street. The restriction in question was imposed by Cap 96, which at the material time was the key legislation controlling town planning and the development of immovable property. The street-widening scheme was enforced pursuant to the provisions of section 12 of Cap 96 in the public interest, namely the improvement of the existing road network. At the time, Grivas Digenis Avenue was becoming one of the most central streets of Nicosia. In assessing the proportionality of the interference, the Government recall that Article 23(3) of the Constitution provides for the payment of just compensation for any restriction or limitation which materially decreases the economic value of property. However, the applicant never applied for such compensation.

43. The applicant maintains that the Republic deprived her of 2,060 square meters of her land:

a) without following the conditions for compulsory expropriation under Article 23(2) and (4) of the Cyprus Constitution and the relevant provisions of Compulsory Acquisition Law 15/1962;

b) without complying with the principle of proportionality because it did not pay any compensation for the expropriation;

c) without giving her notice of the deprivation and of the subsequent change of her title deed, the Land Register and the Government Survey Plan; and

d) by changing her title deed and falsely declaring the expropriation to be a "compulsory acquisition ... by virtue of cession to the road".

The applicant submits that she has been unjustifiably deprived of her property. The expropriation of property is always a deprivation whether the portion taken is small or large, and irrespective of its value. The Government confuse the part taken, which they ignore, and the remainder of the property. Moreover, the Republic to date

continues to deprive her of the expropriated part of her land and prevents her from peacefully enjoying it as an owner.

44. The applicant further alleges that section 13 of the Streets and Buildings Regulation Law, Cap. 96, (hereafter "Cap 96") contravenes Article 1 of Protocol No. 1. Section 13 of Cap. 96 provides a machinery which is completely different from a procedure of compulsory acquisition and which amounts to a direct and automatic expropriation without compensation because a permit is being given. The permit is used as an excuse to facilitate the street-widening scheme without the public authorities paying compensation to the owners of the property. The fact that a permit is needed to activate the procedure cannot change the nature of the measure. The threat contained in section 13 prohibits the owner from doing anything with his land unless he transfers that part of the land affected by the street-widening scheme. Although expropriation under section 13 is effected automatically on the grant of a building permit, the street-widening scheme may never be implemented, but Cap. 96 does not provide for the return of the property taken, whereas Article 23 § 5 of the Constitution does foresee the return of unused property compulsorily acquired.

45. She also submits that the decision of the Supreme Court, sitting as an appeal court and holding that she had no *locus standi* regarding the disputed land (which she had not transferred to her children), constituted a further violation of that Article, aggravated by the fact that the Supreme Court refused to examine the merits of the case. Finally, she claims that by deciding that section 13 was applicable to her property with the effect of merely limiting rather than depriving her of her rights, the Supreme Court, sitting as a first instance court, further violated Article 1 of Protocol No. 1.

46. Furthermore, the applicant contends that the principle of proportionality has not been respected. The value of the land taken was many times higher than the value of the minor building alterations made by Mobil Oil to the applicant's property. The latter construction was not the permanent development of the land for the applicant and her children. What was built on the applicant's plot by Mobil was only a fraction of what could have been built under the laws and regulations existing at that time.

47. The Court reiterates that Article 1, which guarantees in substance the right to property, comprises three distinct rules (see the James and Others v. the United Kingdom judgment of 21 February 1986, Series A No. 98-B, § 37). The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of the peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to the peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule.

48. In the present case the Court notes that, by letter of 28 March 1978, the Municipality of Nicosia requested the Office of the Land Registry and Survey to register as part of the public domain, by virtue of section 13 (1) of Cap. 96, a part of plot 565 affected by the street-widening scheme. At some time between 1978 and 1979, the District Land Registry Office of Nicosia registered the disputed area of 2,060 square feet as part of Grivas Digenis Avenue.

49. Section 13 has an automatic effect in case the owner of a property affected by a notice of acquisition wishes to develop his land and asks for a permit to that effect.

The grant of the permit activates the procedure and the affected property becomes part of the public domain, notably part of the street in the present case.

50. The Compulsory Acquisition Law of 1962 (as amended by Law 135 (1) 1999) provides for the personal notification of any person whose property is affected by a notice of acquisition. However, the Municipality of Nicosia did not expressly mention in the Notice of 30 March 1973 in the Official Gazette that plot 565 was affected by the street-widening scheme. The Government themselves concede that the plot number was not expressly set out in the Notice because it was not a corner plot. In a letter dated 24 July 1973 from the Municipality to the applicant's tenant on the plot, Mobil Oil, it was stipulated that the plans of that scheme should be taken into account and implied that Mobil should respect the prescribed distance between one of its new constructions and the new alignment of the road. Although a copy of the official plan which showed the effect of the scheme was attached to the letter, that letter was never communicated to the applicant. The Government Survey Plan, the Land Register and the applicant's ownership were amended without anyone notifying her. The Government allege that a new certificate of registration was issued by the Land Office for plot 565 in which the surface of the plot was stated to be 21,428 square feet. However, the new certificate was never sent to the applicant, who obtained a copy of the amended version in 1992.

51. The applicant became aware of the situation accidentally in 1989 and on 17 November 1989 lodged an application with the Supreme Court, sitting as a first instance court. On 27 February 1998 the Supreme Court, sitting as an appeal court, dismissed the applicant's appeal on the basis that she had no longer had *locus standi* in respect of the disputed property because of the transfer of her property to her children in 1992. However, what the applicant actually transferred to her children was the undisputed part of her property. The disputed area had already been taken when the transfer was made and the applicant was no more at that time the registered owner of that area. Consequently, the transfer of the applicant's property to her children could not entail a loss of her legal interest in respect of the disputed area for the purposes of Article 1 of Protocol No. 1.

52. As a result, the Court considers that the applicant has been deprived of her property without any compensation, in breach of Article 1 of Protocol No. 1.

53. There has therefore been a violation of this Article.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

54. The applicant also alleges a double violation of Article 6 § 1 of the Convention which, as far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time ... by [a] ... tribunal..."

55. The applicant submits that there has been a violation of her right of access to court because she was not given any notice of the expropriation. The decision of the Supreme Court to dismiss her appeal on the ground of the loss of *locus standi* (without examining the merits of the case) merely because she had exercised her constitutional right to donate the remainder of her property to her children, deprived her of any remedy to challenge the lawfulness of the deprivation of her property. The unreasonable delay in the delivery of the judgment of the Supreme Court, sitting as a first instance court, and the continuous, unlawful omission of the

Republic (since 1978) to notify her of the expropriation are factors which, if they had not existed, would not have given rise to the issue of any loss of *locus standi*.

56. Furthermore, by dismissing the applicant's appeal on the ground that the acts of the Municipality and the Republic were not executory acts and by establishing case-law to the effect that section 12 of Cap. 96 does not amount to a deprivation of property (above-mentioned judgment in the case of Neophytos Sofroniou and Others v. the Municipality of Nicosia and Others), the Supreme Court denied the applicant the right to challenge the legality of the deprivation of her land.

A. Length of proceedings

57. As regards the length of proceedings, the Government recall that the proceedings before the Supreme Court, sitting as a first instance court, were completed within two years and two months (17 November 1989 – 22 January 1992). All the adjournments were requested by the parties. Some of them were asked for by the applicant's lawyer. Requests for adjournments made by the lawyers of the Municipality and the Republic never met with any objection from the applicant's lawyer.

58. The decision of the Supreme Court was issued 12 months after it had been reserved. However, the applicant made no attempt to set in motion the mechanism provided for in Regulations 3 and 5 of the Procedural Regulations for the Prompt Issue of Court Judgments of 1986: by 22 July 1992 (i.e. 5 months before the transfer of plot 565 to her children), the applicant could have invited the Full Bench of the Supreme Court to make an order for the issue of the reserved judgment by a specific date (Regulation 5(b) – paragraph 39 above).

59. Before the Supreme Court, sitting on appeal, the hearing was fixed for 12 December 1996 (i.e. 3 years and 9 months after the filing of the appeal) on the initiative of the Registrar and upon the persistent failure of the applicant to ask for the hearing to be fixed. This hearing was adjourned three times: once at the request of the lawyer for the Municipality with the consent of the applicant's lawyer, once at the request of the applicant and once of the court's own motion. These proceedings were completed within 9 months (12 December 1996 – 10 September 1997) and the judgment was delivered 5 months after it had been reserved.

60. The applicant maintains that the length of the proceedings was due mainly to the conduct of the Supreme Court. Before the Supreme Court, sitting as a first instance court, the application was filed on 17 November 1989 and fixed for directions on 16 March 1990 (and not on 16 March 1989, as stated inadvertently by the Government). The case was postponed continuously to allow the Municipality to file its written opposition. The written opposition of the Republic was filed on 23 January 1990 and the written opposition of the Municipality on 20 June 1990, despite the 21 day deadline from the day of service of the application (Regulation 5(1) of the Supreme Constitutional Court Rules). Though the written address of the applicant was filed on 19 September 1990, the written address of the Municipality was filed on 14 April 1991 and that of the Republic on 8 May 1991. The case was postponed for these purposes four times. Judgment was reserved on 22 January 1992 and issued over a year later on 2 February 1993. However, according to Regulation 4 of Procedural regulations for the Prompt Issue of Court Judgments, if a decision which has been reserved for more than nine months, the case is *ipso jure* fixed before the Supreme Court for the delivery of the appropriate order (paragraph 39 above).

61. The applicant points out that before the Supreme Court, sitting as an appeal court, the appeal was filed on 9 March 1993 and not, as wrongly stated by the Government, on 9 March 1994. The hearing was fixed on 12 December 1996 and eventually commenced on 3 April 1997. On 12 December 1996 the Municipality asked for an adjournment and on 20 January 1997 the court decided to discontinue the hearing in order to deal with two other cases. On 1 and 9 July 1997 the hearing was again adjourned at the request of the Municipality.

62. The Court notes that the period to be taken into consideration began on 17 November 1989, when the applicant lodged an application with the Supreme Court, sitting as a first instance court, and ended on 27 February 1998, with the judgment of the Supreme Court, sitting as an appeal court. The proceedings thus lasted eight years, three months and ten days, over two levels of jurisdiction.

63. The Court recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see, among other authorities, the Styranowski v. Poland judgment of 30 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3376, § 47). Moreover, the Court reiterates that only delays for which the State can be held responsible may justify a finding that a "reasonable time" has been exceeded (*Papachelas v. Greece*[GC], No. 31423/96, § 40, ECHR 1999-II).

64. The Court notes that the case was not at all complex and the Supreme Court, in both proceedings, dismissed the applicant's claims on procedural grounds. Moreover, the proceedings at first instance were adjourned eight times awaiting for the Municipality or the Republic to file their observations. Although the applicant appealed on points of law on 9 March 1993, the hearing commenced on 3 April 1997 and, thereafter, the proceedings were adjourned twice.

65. In the light of these circumstances, the Court concludes that there has been a violation of Article 6 § 1 with respect to the length of the proceedings.

B. Access to a court

66. As regards the right of access to court, the Government contend that there has been no violation of this right, because the factual situation is different from that in the case of De Geouffre de la Pradelle v. France (judgment of 16 December 1992, Series A n° 253-B). In the present case the applicant was aware of the provisions of the street-widening scheme upon its publication in the Official Gazette; she was notified of the fact that the building permit could only be issued in accordance with the requirements of the street-widening scheme and she failed to challenge the acts of the public authorities. As to the question of *locus standi*, the Government submit that, even if the requirements under domestic law impose a limitation on the right of access, such limitation is reasonable and pursues a legitimate aim: the smooth operation of public administration. On 8 December 1992 the applicant did not transfer 21,428 square feet of land. She transferred her entire legal title in plot 565. This is why she no longer had an interest in the proceedings.

67. The applicant reiterates that she was given no notice of the intended acquisition of part of her plot, although other owners on the same avenue were given proper notice. As to the argument that the acts of the authorities were not executory, this is contrary to section 13 § 2 of Cap 96 which provides that the revised registration

shall be deemed final when the District Land Office proceeds with the necessary amendments to the relevant registrations.

68. As to the loss of *locus standi,* the applicant submits that she could not be considered to have lost her legal interest by the transfer of the remainder of her property to her children, because she could not and did not transfer property of which she was not the registered owner. Even if the Supreme Court was right in saying that the applicant had lost her *locus standi*, it should not have dismissed the appeal without giving her daughter an opportunity to intervene in the proceedings. As a result of the decision of the Supreme Court, neither the old nor the new owners of the remainder of the plot could have had a right to participate in a hearing determining ownership claims. However, the Supreme Court held that for a party to have *locus standi* it must have a legitimate interest at all relevant times: at the time the disputed act was effected, at the time of filing the application and at the time of its adjudication. Finally, had the applicant been informed about the deprivation 22 years ago when it occurred (1978 to 1979), the question of its legality would have been settled many years earlier, without the fate of the applicant's appeal being affected by the transfer of the applicant's property to her children on 8 December 1992.

69. The Court recalls that in the aforementioned case of De Geouffre de la Pradelle it found a violation of Article 6 § 1 because the applicant did not have a clear, practical and effective opportunity to challenge an administrative act that was a direct interference with his right to property. In effect, the Court sanctioned the shortcomings of the French system of notifying certain administrative acts, and held that the impugned act should have been personally notified to the applicant without him having to peruse the Official Gazette for months or years on end.

70. In the present case, the Court notes that the applicant was not personally notified of the fact that the Municipality of Nicosia had expropriated a part of her land. Yet the Supreme Court at first instance dismissed her claim as being out of time through no fault of her own and, on appeal, held that she had no *locus standi* in respect of the disputed property as she had transferred her property to her children in the meantime. The Supreme Court failed in this respect to take account of the fact that the disputed part of the applicant's property could not have been transferred by the applicant due to the expropriation in question. The Court considers that this amounts to a violation of the applicant's right of effective access to court.

71. There has therefore been a violation of Article 6 § 1 in that respect.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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."

73. The applicant claims compensation for the deprivation of her property – 2,060 sq. feet of land – which has valued by an expert at 136,000 Cyprus pounds, plus 9% interest as provided by Articles 6 and 8 of the Compulsory Acquisition Law of 1983. The applicant considers that the valuation must be based on the current value of the property. Accordingly, the expert valuation which she presented is based on recent sales of certain building sites in the same vicinity.

Furthermore, the applicant claims compensation for the loss of use of her property and the consequent lost of opportunity to develop or lease it, as from September 1989, and which she estimates at 79,230 Cyprus pounds (including interest). In this

connection, the applicant refers to the Court's judgment in the case of Loizidou v. Turkey (29 July 1998 (Article 50), Reports 1998-IV, §§ 33-34), where the Court considered as reasonable the general approach of assessing the loss suffered by the applicant with reference to the annual ground rent, calculated as a percentage of the market value of the property, that could have been earned on the properties during the relevant period.

74. The Government submit that, even if the Court finds that there has been a deprivation of property, the finding of a violation would, in the circumstances, constitute sufficient just satisfaction. In effect, the Government submit that the applicant could and still can bring proceedings before the domestic courts and seek compensation, especially following the judgment of the Supreme Court in the case of Cathleen Georgallides v. The Attorney-General; there is a potential eventuality of the applicant ending up with double compensation. However, if the Court decided to grant an award, the Government stress that the deprivation of the property took place on 27 March 1978 and maintain that it would be difficult to accept the relevance of the market value of the property at any time after that date, in particular in view of the fact that in 1992 she transferred her rights to her children. Furthermore, the Court should take into consideration that in 1978 the market value of plot 565 was 70 Cyprus pounds per square meter, and that by 1978, because of the street-widening scheme, considerable betterment had accrued to the remaining part of plot 565 and its market value thus increased.

75. As regards the claim for the loss of the use of property, the Government submit that it is totally unfounded. They allege that the disputed area consists of a narrow stripe of land along the frontage of plot 565 on Grivas Digenis Avenue. They recall that since 1959 the petrol station has been leasing the property, paying an annual rent for it, and repeat that in 1992 the applicant chose to alienate all her proprietary interests.

76. For non-pecuniary damage, the applicant claims 50,000 Cyprus pounds. She maintains that she suffered anguish, distress and feelings of helplessness, frustration and mistrust for public authorities because the Republic did not give her the opportunity to challenge the unprecedented illegal deprivation of her property, and because the proceedings have been unreasonably lengthy.

77. The Government submit that the claim under this heading is unfounded and grossly exaggerated. The outcome of the proceedings could not in any way alter the fact that the affected part of the plot had become part of the street, and thus these proceedings were not directly connected with the alleged violation. Furthermore, and despite the question of *locus standi*, at first instance the applicant's claim was dismissed as out of time. Finally, the delay in the proceedings was to a very substantial extent attributable to the applicant's conduct, who failed to apply to have the appeal fixed for hearing.

78. The applicant claims 1,896 Cyprus pounds plus 10% VAT for lawyer's fees and sundry costs and expenses incurred in the proceedings before the national courts, and 16,323 pounds plus 10% VAT for those incurred before the Court and of which she provides details. (1,323 Cyprus pounds of the last mentioned amount corresponds to the fees of a Greek professor who provided legal advice in the case.) The applicant further claims the reimbursement of 256 Cyprus pounds which the Supreme Court ordered her to pay for the costs of the Republic and 2,000 Cyprus pounds for expert fees.

79. The Government submit that the proceedings before the domestic courts were not directly connected to the alleged violation and, therefore, the applicant is not

entitled to the reimbursement of her costs before these courts. As regards the costs claimed for the procedure before the Court, they maintain that they are grossly exaggerated.

80. In the circumstances of the case, the Court considers that the question of the application of Article 41 is not ready for decision and that it must be reserved, having regard to the possibility of an agreement between the respondent State and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention with respect to the length of the proceedings;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention with respect to the applicant's right of access to a court;

4. *Holds* that the question of the application of Article 41 is not ready for decision;
   accordingly,
   (a) *reserves* the said question in whole;
   (b) *invites* the parties to submit within eight weeks further observations on the real value of the land in question or to inform the Court of any friendly settlement that they may reach in the meantime;
   (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 5 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ J.-P. COSTA
Registrar President

SERGHIDES v. CYPRUS JUDGMENT