Unofficial Translation

DISTRICT COURT OF FAMAGUSTA

Before: L. Demetriadou – Andreou, P.D.C.

General Application no. 8/2019

Between:

Dinos Ramon

Applicant

-and-

Republic of Turkey

Respondent

-and-

European Commission

Garnishee

Application dated 22/02/2019

for a Garnishee Order Nisi

Date: 26 June 2019

For the Applicant: A. Demetriades and Ch. Pogiatzis for Lellos P. Demetriades Law Office LLC

INTERIM JUDGMENT

Introduction – Requested remedies

By the Application under consideration the Applicant applies for the issuing of the following Orders:

(A) An Order (which shall be drawn up and/or activated and/or issued only after the leave of the Court of Justice of the European Union is secured) which orders the Garnishee/European Commission not to part with or pay or distribute or alienate in any way any amount of money which is or may be at any time in its possession or under its control and is in the name of the Respondent/ Republic of Turkey or is owed or it may at any time be owed by the Garnishee to the Respondent up to the amount of €585,418.74 which is owed to the Applicant by virtue of the Judgment of the European Court of Human Rights against the Respondent dated 26/10/2010 in the case 29092/95, Ramon v. Turkey concerning the pre-accession funds for the benefit of the Respondent relating to the protection and promotion of Human Rights.

(B) Declaration of the Court (which shall be activated only after the leave of the Court of Justice of the European Union is secured) which orders the Garnishee/European Commission not to part with or pay or distribute or alienate in any way any amount of money which is or may be at any time in its possession or under its control and is in the name of the Respondent/ Republic of Turkey or is owed or it may at any time be owed by the Garnishee to the Respondent up to the amount of €585,418.74 which is owed to the Applicant by virtue of the Judgment of the European Court of Human Rights against the Respondent dated 26/10/2010 in the case 29092/95, Ramon v. Turkey concerning the pre-accession funds for the benefit of the Respondent in relation to the protection and promotion of Human Rights.

Legal basis of the Application

The legal basis of the Application is, inter alia, Sections 73-81 of Cap. 6, Section 2 of Law 14/60, Articles 1, 13, 19, 41 and 46 of the European Convention on Human Rights (Ratification Law) of 1962, Article 169 of the Constitution, Articles 52, 244-250 and 355 of Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action, Article 1 of Protocol No. 7 on the Privileges and Immunities of the European Communities of the Treaty on the Functioning of the European Union, Articles 9, 13, 17 and 47 of the Treaty on the Functioning of the European Union as well as the inherent powers and practice of the Court.

Affidavit of Dinos Ramon

The Application is supported by the Affidavit of the Applicant in which the following are set out in summary:

- He is a Cypriot citizen and the Applicant in Application no. 29092/95 (hereinafter Recourse) before the European Court of Human Rights (hereinafter ECtHR).

- In the Recourse he was claiming, against the Republic of Turkey (which is the Respondent in this Application), just satisfaction due to, inter alia, the violation of his right to peaceful enjoyment of his property in the occupied by the Respondent Famagusta, by virtue of Article 1 Protocol 1 of the European Convention on Human Rights (hereinafter ECHR), as a consequence of the Turkish invasion in July of 1974.

- On 22/9/2009 by the Judgment of the ECtHR (**Exhibit 1**) it was judged that

  a) There was a violation of Article 1 Protocol 1 of the ECHR.

b) At that stage the matter regarding the just satisfaction in accordance with Article 41 of the ECHR could not be determined and the matter was reserved.

- The abovementioned Judgment became final in accordance with Article 44 (3) of the ECHR on 1/3/2010.

- Following the Judgment of the ECtHR dated 26/10/2010 (**Exhibit B**) on the matter of just satisfaction, it had been decided that the Respondent shall pay the Applicant the amount of €450.000 plus €8.000 plus interest of 3% in addition to the marginal lending rate of the European Central Bank. The said Judgment became final in accordance with Article 44(2) of the ECHR on 11/4/2011.

- Until the filing of this Application, the Respondent has not paid any amount by virtue of the above and the amount due to date is €585,418.74 (**Exhibit C**).

- On the basis of the information the Applicant received by his lawyers the European Commission has in its possession or under its control about €4,453.9 million which are intended to be paid to the Respondent as pre-accession assistance, inter alia, as follows:

  a) On 11/3/2014 Regulation 231/2014 of the European Parliament and of the Council establishing an Instrument for the Pre-accession Assistance (IPA II) was published (**Exhibit D**).
  b) The Respondent, as a candidate country for EU Membership, benefits from the Pre-accession Assistance Instrument.
  c) According to the website of the Garnishee (**Exhibit E**) the total amount of the funds intended for the Respondent is the amount of €4,453.9 million.
  d) From this amount, €624,9 million is intended for the protection and promotion of Human Rights and the Rule of Law.
  e) Based on information the affiant gained from the media, out of the total amount of €4,453.9 million intended for the Respondent, an

amount (about €70 million) appears to have been cut off and or was frozen due to the Human Rights situation within the country.

f) In any case, these funds have not been withdrawn and the abovementioned measure does not amount to a termination of the pre-accession assistance and/or termination of the pre-accession talks.

- Based on the information supplied by the lawyers of the affiant, the payment of the amount due to the Applicant by the Respondent, as appears from the Judgment, constitutes a measure promoting respect of human rights not only in the Republic of Turkey but also in the European Union in general.

- Based on the information by the lawyers of the affiant, the property and Assets of the European Union shall not be subject to any coercive measure of any administrative or judicial authority of the CJEU according to Article 1 of Protocol No. 7 on the Privileges and Immunities of the European Communities of the Treaty on the Functioning of the European Union. Consequently, in order to achieve the payment of the said amounts to the Applicant, the CJEU must decide, following an Application, the waiver of the immunity of the European Commission as an organ of the European Union as regards to the abovementioned property. Given the abovementioned immunity, it is requested that the Order and/or Declaration be activated only when the immunity of the European Commission is waived by the CJEU.

- The Respondent refuses or neglects to pay the amount due, according to the Judgment, as can be seen from the copy of the last letter sent by the lawyers for the Applicant dated 23/2/2018 to the Committee of Ministers of the Council of Europe (**Exhibit F**). The above, is evidenced also by the fact that the Republic of Turkey decided not to respond to the call of the Committee of Ministers regarding the settlement of the Judgments against it, including the Judgment of the ECtHR (**Exhibit G**).

Legal Aspect

The possibility of execution through a garnishee order is regulated by **Sections 73-81** of **Civil Procedure Law Cap. 6** which deal with the method of execution of a judicial decision, known as seizure of property which is already due or is expected to be received by the judgment debtor, from a third person. The said procedure is applicable when the Applicant for the seizure is a judgment creditor. Particularly, **Section 14 (1) (d) of the Civil Procedure Law Cap. 6** provides that the garnishee order according to Part VII of the Law constitutes a means of execution of a judgment.

Section 73 of the **Civil Procedure Law Cap. 6**, provides for the following:

"Where the judgment debtor is beneficially interested in any money, goods or other movable property in the custody or under the control of any other person in Cyprus, or where such other person is indebted to the judgment debtor, a writ of attachment calling on such other person to appear before the Court and be examined touching the property in his hands which is mentioned in the writ, and directing him not to part with the custody thereof in the meantime, may be issued at any time after judgment on the application of the judgment creditor. The writ shall render the property of the judgment debtor which is in the hands of such other person answerable as hereinafter mentioned for the satisfaction of the judgment debt, as referred below".

According to **Section 78** of **Cap. 6**, the Court may, after hearing all persons which it may consider to be interested, order that any part of the property attached shall be paid over to the judgment creditor or may make such other order as it may seem just.

Section 73 of **Cap. 6** is differentiated from the relevant English Legislation since it is not limited to the issue of a garnishee order for debts as it happens in England. It extends the discretion of the Court to issue an order in regard to other forms of rights, in goods, money securities and amounts of money[1].

The procedure to be followed, according to the relevant case law, is the filing of an ex-parte application for the issue of an order nisi. As soon as the garnishee and the judgment creditor are notified the judicial procedure for

[1] See Carna Plants Ltd v. Masalcha Brothers Ltd, a.o (1990) 1 J.S.C. 28, 32.

making absolute the writ of attachment or the issuing of such other order as may seem just[2].

The procedure to be followed, as defined in **Part VII of Cap. 6**, and the method of attachment have been the subject matter of review in **F. Hoffman La Roche and Co. AG v. Inter-Continental Pharmaceuticals (Bletchley) Ltd** (1969) 1 C.L.R. 106 as well as in the English case **Choice Investments Ltd v. Jeronimnimon Midland Bank Ltd** (1980) 2 W.L.R. 80.

The relevant extract of **F. Hoffman La Roche and Co. AG** (the above case) is:

"Sections 73 to 81 (Part VII) of the Civil Procedure Law, Cap. 6 (which we need not quote verbatim) provide that, if an application for the issue of a writ of attachment is granted by the Court, a writ goes out to the third party (the garnishee) calling on him to appear before the Court and be examined regarding the money or other movable property in his hands which is alleged to be the property of, or be due to, the judgment debtor. Under the provisions of section 74[3], that property becomes security in the hands of the garnishee, for the satisfaction of the claim of the judgment creditor. Finally, under section 78[4], the Court, after hearing all interested persons, may order that any part of the money attached shall be paid over to the judgment creditor in satisfaction of his judgment."

[2] See the judgment of Judge Nathanael in the Action before the D.C. of Nicosia no. 8289/92 in which the following are stated as regards to the procedure for a garnishee order: "Even though the words "nisi" and "absolute" are not used in our law, the relevant procedure of Part VII of the Cap. 6, is similar since a garnishee order is issued on a provisional basis which is addressed to the garnishee, freezing money which is in his hands until the Court, after hearing all the interested parties, orders either the payment of the money to the judgment debtor or the removal of the order or any other order as may seem just."

[3] "The writ shall be served on the person thereby directed to appear before the Court; and from the time of the service upon him, all money, securities for money, goods and movable property to which the judgment debtor is beneficially entitled whether solely or jointly with others, and which at the time of the service of the writ, or at any time before it is dissolved, are ore directed to appear, and all debts due or accruing due by him to the judgment debtor at or during that time shall to the extend of the judgment debtor's interest therein and subject to any bona fide prior title thereto or lien or charge thereon, become securities in his hands for the satisfaction of the claim of the judgment creditor".

[4] "The Court may, after hearing all persons whom it may consider to be interested, or after notice to them to attend, order that any part of the property attached which shall consist of money and bank notes, or a sufficient part thereof, shall be paid over to the judgment creditor, or that any part not consisting of money or bank notes, so far as may be necessary for the satisfaction of the judgment, shall be sold, and that the money realized by the sale, or a sufficient part thereof, shall be applied in satisfaction of the judgment, and that the writ be dissolved, or may make such other order as may seem just; and shall make such order as to the costs occasioned by the issue of the writ as it thinks proper."

As can be seen, the procedure for the garnishee order includes **two steps**, namely the **garnishee order nisi** (corresponding to the abovementioned **Section 73** and **74** of Cap. 6) and the **garnishee order absolute** (corresponding to the abovementioned **Section 78** of Cap. 6), by analogy to what applies in England.

With the service to the garnishee of the garnishee order nisi, the amount in his hands is frozen, preventing him in this way from paying same to the judgment debtor. As pointed out in the English case **James Bibby Ltd. V Woods and Howard** [1949] 2 K.B. 449 the garnishee order nisi maintains the suspension of the status quo as regards to the debt and the money may not be shared as the said order does not specify who is entitled. This matter is decided at the second stage during the consideration of whether the garnishee order will become absolute[5].

The abovementioned procedure, in order to be applied, the following conditions shall be met:

a. The Applicant shall be a judgment creditor,
b. The existence of money or goods in the possession of a third person (garnishee) in which the judgment debtor is beneficially interested or the existence of a relationship of creditor and debtor between the judgment debtor and the garnishee and
c. Simultaneously, on the day of the attachment a chose which shall be recognized as a debt shall exist, meaning that an existing debt may be attached.

According to **Article 1 of Protocol No. 7 on the Privileges and Immunities of the European Communities of the Treaty on the Functioning of the European Union**, "the property and assets of the Union shall not be the subject of any administrative or legal measure of constraint **without the authorization of the Court of Justice**". The above Article has been examined by the CJEU case law. According to the relevant case law, the aim of this provision is to prevent the interference with the functioning of the European Union and limit its

[5] "The garnishee order nisi of February 25 merely held matters with regard to the debt in suspense; the money owed by the garnishee could not then be dealt with. But that order did not decide who was entitled to the money; that had to be decided on the application to make the garnishee order absolute."

independence. From this interpretation of **Article 1** of the said **Protocol**, it follows that the immunity of the European Union is not absolute and that a coercive measure, such as the attachment, may be allowed when there is no danger of an interference to its functioning.

However, the aim or the consequence of the abovementioned Article is not the replacement of the role of the national court which is competent for the determination of the existence of the requirements for the attachment. Consequently, the competent Court for the assessment of the existence of the debt of the Respondent to the garnishee, is not the CJEU but the competent National Court.

The following section from **Antippas v. Commission** C-1/02 case is relevant:

"The purpose of Article 1 of the Protocol on the Privileges and Immunities of the European Communities, by virtue of which the property and assets of the Communities are not to be the subject of any administrative or legal measure of constraint without the authorization of the Court of Justice, is to ensure that there is no interference with the functioning and independence of the Communities […]

On the other hand, it is neither the object not the effect of that article to substitute the Court's review for that exercised by the national court with jurisdiction to determine whether all the conditions for a garnishee order are actually satisfied. **Thus, the determination of the question of the garnishee's indebtedness to the judgment debtor does not fall within the Court's jurisdiction but within that of the competent national court**".

The following section of the **Book EU Procedural Law**, Lanaerts, Maselis and Gutman under the title '**B. Limited jurisdiction'** is informative:

'**It is neither the object nor the effect of Art. 1 of the Protocol to substitute review by the Court of Justice for that exercised by the national court having jurisdiction to determine whether all the conditions for a garnishee order are actually satisfied. Thus, the determination of the question of the garnishee's indebtedness to the debtor does not fall within the jurisdiction of the Court of Justice, but within that of the competent national court.** Consequently, the Court of

> Justice's competence with respect to garnishee orders is confined to considering whether such measures are likely, in view of the effects which they have under the applicable national law, to interfere with the proper functioning and the independence of the European Union. However, the Court can make such an assessment only if the indebtedness is not contested by the institution concerned, or has been found in a prior judgment of a national court'.

On the basis of the facts brought before the Court and guided by the relevant legal principles, I conclude that the appropriate conditions are fulfilled for the issuing, under conditions, of a garnishee order nisi regarding the amount of €585,418.74 as regards the funds intended for the Respondent and which are under the control of the Garnishee European Commission.

Due to the immunity that the Garnishee European Commission enjoys and on the basis of the relevant case law stated, the filing of an application for authorization to serve a garnishee order on the Commission for the waiver of the immunity of the Commission is necessary[6]. It is the CJEU that will decide whether it will provide leave for the service of the said order, waiving in this manner the immunity of the garnishee Commission[7].

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[6] See Case 1/88 SA Generale de Banque v. Commission of the European Communities (Application for authorization to serve a garnishee order on the Commission of the European Communities), date 11/1/1989.

[7] See **EU Procedural Law**, Lenaerts, Maselis and Gutman in paragraph 14.01 under the title **A. Principle and purpose:**
"Where a debtor fails to pay the sums owed, the creditor may seek to claim the funds owed by a third party to its debtor. However, where that third party is the European Union, account should be taken of Art. 1 of the Protocol on the Privileges and Immunities of the European Union (the 'Protocol') which provides in relevant part: 'The property and assets of the Union shall not be the subject of any administrative or legal measure of constraint without the authorization of the Court of Justice.' The purpose of this provision is to ensure that there is no interference with the functioning and independence of the Union. **Therefore, a garnishee order can be served on the Union only after prior authorization of the Court of Justice"**

See also the **paragraph 14.05** of the said book under title **A. Automatic Immunity:**
"The immunity provided for in Art. 1 of the Protocol is automatic. There is no need for the Union institution concerned to rely expressly on Art. 1 of the Protocol, in particular by giving notice to the person who caused the order to be issued. Under those circumstances, it is for the latter to seek authorization from the Court to waive the immunity. However, if the institution concerned states that it has no objection to the measure of constraint, the application for authorization is devoid and need not to be considered by the Court".

Conclusion

Given that it is the jurisdiction of the CJEU to provide leave for the service of the Garnishee order, an interim Order Nisi is issued, which will be activated and/or issued only when the leave of the CJEU is secured, which will order the Garnishee/European Commission not to part with or pay or distribute or alienate in any way any amount of money which is or may be at any time be in its possession or under its control and is in the name of the Respondent/ Republic of Turkey or is owed or it may be at any time owed by the Garnishee to the Respondent up to the amount of €585,418.74 which is owed to the Applicant by virtue of the Judgment of the European Court of Human Rights against the Respondent dated 26/10/2010 in the case 29092/95, Ramon v. Turkey concerning the pre-accession funds for the benefit of the Respondent in relation to the protection and promotion of Human Rights.

On the basis of the above, the said Order is returnable on 11/11/2019.

(Sign.) ……..

L. Demetriadou – Andreou, P.D.C.

True Copy

Registrar

/L.D.