



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

CASE OF AVIS ENTERPRISES v. GREECE

(18/1998/921/1133)

JUDGMENT

STRASBOURG

30 July 1998

SUMMARY¹

Judgment delivered by a Chamber

Greece – proceedings to have an order for the expropriation of land rescinded as compensation due had not been paid within statutory time-limit

ARTICLE 32 § 1 OF THE CONVENTION

Government had referred case to Court outside three month time-limit – explanations put forward did not disclose any special circumstance of a nature to suspend running of time – it followed that application bringing case before Court was inadmissible since it was out of time.

Conclusion: Court unable to take cognisance of merits of the case (unanimously).

1. This summary by the registry does not bind the Court.

In the case of Avis Enterprises v. Greece¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr F. GÖLCÜKLÜ,

Mr F. MATSCHER,

Mr C. RUSSO,

Mr N. VALTICOS,

Mr I. FOIGHEL,

Mr R. PEKKANEN,

Mr J. MAKARCZYK,

Mr V. BUTKEVYCH,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 22 May and 26 June 1998,

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

PROCÉDURE

1. The case was referred to the Court by the Greek Government (“the Government”) on 7 March 1998. It originated in an application (no. 30175/96) against the Hellenic Republic lodged with the European Commission of Human Rights (“the Commission”) on 15 November 1995 under Article 25 by Avis Hotel, Tourist and Rural Industry Enterprises, a limited company incorporated under Greek law.

The Government’s application referred to Articles 44 and 48 of the Convention. The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

Notes by the Registrar

1. The case is numbered 18/1998/921/1133. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant company stated that it wished to take part in the proceedings and designated the lawyer who would represent it (Rule 30).

3. The Chamber to be constituted included *ex officio* Mr N. Valticos, the elected judge of Greek nationality (Article 43 of the Convention), and Mr R. Bernhardt, the President of the Court (Rule 21 § 4 (b)). On 30 March 1998, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr F. Matscher, Mr C. Russo, Mr I. Foighel, Mr R. Pekkanen, Mr J. Makarczyk and Mr V. Butkevych (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. Noting that the application bringing the case before the Court had been lodged after the period set out in Article 32 § 1 of the Convention had expired, Mr Bernhardt, as President of the Chamber (Rule 21 § 5), asked the Registrar to invite the Government's observations on this point. The Registrar received the observations on 15 April 1998.

AS TO THE FACTS

5. The applicant company owns a 13,800 sq. m plot of land on the island of Santorini, a popular tourist destination in Greece.

On 15 February 1978, by decision no. 1103/1978 of the Prefect of the Cyclades islands, the State expropriated real estate covering a surface of 4,200 sq. m, with a view to installing floodlights for Santorini Airport. 270 sq. m of the applicant company's land were expropriated.

6. On 20 December 1979 the State applied to the Court of First Instance of the island of Syros for a provisional amount of compensation per square metre of land expropriated to be assessed. The applicant company was not summoned to appear and did not do so.

On 23 February 1981 the court assessed the provisional amount of compensation.

On 19 August 1982 the provisional compensation was paid to the Bank for Official Deposits, but the applicant company refused to accept it on the ground that it was substantially less than the value of the land that had been expropriated from it.

7. On 18 August 1981 the applicant company had applied to the Court of Appeal of the Aegean Sea for a final amount of compensation per square metre to be assessed. It had also sought special compensation for three other parcels of its land that had not been expropriated, on the ground that their value had diminished as the expropriated part had divided the land in two.

On 6 July 1984 the Court of Appeal assessed the final amount of compensation and special compensation for the three unexpropriated parcels.

8. On 8 March 1985 the State appealed to the Court of Cassation.

On 27 June 1986 the Third Division of the Court of Cassation upheld the Court of Appeal's judgment in so far as it had assessed the final amount of compensation and remitted the case to the Fourth Division to rule on the merits of the action brought by the applicant company on 18 August 1981.

On 10 July 1987 the Fourth Division of the Court of Cassation dismissed the applicant company's claim for special compensation in respect of two of the three unexpropriated parcels of land. The difference between the amount of compensation as provisionally assessed and as finally assessed by the Court of Cassation was not at that time paid to the applicant company.

9. On 25 June 1990 the applicant company applied to the Court of Appeal of the Aegean Sea for a declaration that the expropriation had been rescinded by operation of law as the final amount of compensation due had not been paid.

On 20 March 1991 the Court of Appeal dismissed that application as unfounded.

10. On 29 May 1991 the difference between the amount of compensation as provisionally assessed and the amount as finally assessed by the Court of Cassation was paid to the Bank for Official Deposits. The applicant company, which has not yet accepted that sum, alleges that it was not at any stage advised that it had been deposited.

11. On 10 June 1991 the applicant company appealed to the Court of Cassation against the judgment of 20 March 1991. It also sought an order that the State pay the costs of the proceedings.

On 20 June 1995 the Court of Cassation upheld the impugned judgment and dismissed the applicant company's appeal. It also held that the applicant company was to bear the costs. In the earlier stages of the proceedings, there had been a set-off between the parties in respect of costs, even though the applicant company had requested that the costs be borne by the State.

PROCEEDINGS BEFORE THE COMMISSION

12. Avis Enterprises applied to the Commission on 15 November 1995. It complained, firstly, that it had been deprived of its property without receiving any compensation in proceedings that had been unfair and, secondly, that where the expropriating party was the State the costs were always "set off" whereas in all other cases the costs were borne entirely by the party in whose favour the expropriation order was made. It relied on Article 6 § 1 of the Convention (right to a fair hearing within a reasonable

time) and Article 1 of Protocol No. 1, the latter provision taken both individually and together with Article 14 of the Convention.

13. The Commission (First Chamber) declared the application (no. 30175/96) admissible on 10 April 1997. In its report of 28 October 1997 (Article 31), it expressed the opinion that:

(a) there had been a violation of Article 6 § 1 of the Convention as regards the fairness and length of the proceedings (unanimously);

(b) there had been a violation of Article 1 of Protocol No. 1 both because reasonable compensation had not been paid within the time provided for by law and because of the system for “setting off” costs under Greek law as applied in the case before it (unanimously); and

(c) no separate question arose under Article 14 of the Convention taken together with Article 1 of Protocol No. 1 (fourteen votes to three).

The full text of the Commission’s opinion is reproduced as an annex to this judgment.¹

AS TO THE LAW

COMPLIANCE WITH ARTICLE 32 § 1 OF THE CONVENTION

14. Article 32 § 1 of the Convention provides:

“If the question is not referred to the Court in accordance with Article 48 of [the] Convention within a period of three months from the date of the transmission of the report to the Committee of Ministers, the Committee of Ministers shall decide ... whether there has been a violation of the Convention.”

15. The Court notes that the Greek Government referred the case to it on 7 March 1998 whereas the Commission’s report was communicated to the Committee of Ministers on 3 December 1997.

16. The Government said that the application had been sent by express post through the Greek Post Office on 23 February 1998; as evidence of that, they referred to a telephone call made by the Agent’s assistant, who was responsible for the case, to the Court registry on 2 March 1998 to enquire whether the application had been received. They stated that the decision to refer the case to the Court had been taken on 13 January 1998 at a meeting of the State Legal Council; they produced a minute of that decision. Lastly, they said that, unlike private express delivery services, the Greek Post Office did not provide dispatch notes for that type of delivery. However, the Government enclosed a copy of the relevant page in its postal

¹ *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1997), but a copy of the Commission’s report is obtainable from the registry

dispatch register showing that the application had been handed in to the post office on 23 February 1998.

17. The Court notes that the Government's application was received by facsimile transmission at the registry on 7 March 1998 at 10.29 p.m. and that the version allegedly sent on 23 February 1998 was never received by the registry or any other department of the Council of Europe. The explanations put forward by the Government do not disclose any special circumstance of a nature to suspend the running of time or justify its starting to run afresh (see, *mutatis mutandis*, the following judgments: *Istituto di Vigilanza v. Italy*, 22 September 1993, Series A no. 265-C, p. 35, § 14; *Figus Milone v. Italy*, 22 September 1993, Series A no. 265-D, p. 43, § 14; *Goisis v. Italy*, 22 September 1993, Series A no. 265-E, p. 51, § 19; *Morganti v. France*, 13 July 1995, Series A no. 320-C, p. 48, § 14; and *Halford v. the United Kingdom*, 25 June 1997, *Reports of Judgments and Decisions* 1997-III, p. 1008, § 6).

It follows that the application bringing the case before the Court is inadmissible as it is out of time.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that it is unable to take cognisance of the merits of the case.

Done in English and in French, and notified in writing on 30 July 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar