CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF PROTOPAPA AND MARANGOU v. GREECE

(Application no. 38971/97)

JUDGMENT

STRASBOURG

28 March 2000

FINAL

28/06/2000

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision before its reproduction in final form in the official reports of selected judgments and decisions of the Court.

In the case of Protopapa and Marangou v. Greece,

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

Sir Nicolas BRATZA, *President*,
Mr C. ROZAKIS,
Mr L. LOUCAIDES,
Mr P. KŪRIS,
Mr W. FUHRMANN,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 24 August 1999 and 14 March 2000,

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

PROCEDURE

1. The case originated in an application (no. 38971/97) against Greece 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 Greek nationals, Mrs Patra Protopapa and Mrs Anna Marangou ("the applicants"), on 17 October 1997.

2. The applicants were represented by Mr K. Horomides, a lawyer practising in Thessaloniki. The Greek Government ("the Government") were represented by their Agent, Mr A. Komissopoulos, President of the State Legal Council.

3. The applicants alleged that they did not have a hearing within a reasonable time in the proceedings they instituted before the Council of State on 16 August 1993.

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 called upon to examine the case (Article 27 § 1 of the Convention) was constituted according to the provision of Rule 26 § 1 of the Rules of Court.

6. By a decision of 24 August 1999, the Chamber declared the application partly admissible.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants are the owners of a 50% share in a plot of land situated in Rhodes in the area of Ayios Stephanos (Monte Smith).

8. On 8 November 1971 the Ministers of Finance and Culture and Sciences decided to expropriate the plot in question considering that it was of archaeological interest.

9. The owner of the other 50% share accepted the expropriation and received compensation.

10. On 19 October 1988 the applicants requested the two Ministers to revoke the above-mentioned expropriation decision because, as they alleged, the property was not situated within the archaeological zone of Ayios Stephanos (Monte Smith) and because the expropriation of their share had not been completed within the time-limit provided for in domestic law. Having received no reply within the time-limit provided for in domestic law, on 2 February 1989 the applicants lodged an application for judicial review (*etisi akiroseos*) before the Council of State (*Simvulio tis Epikratias*) challenging the implied refusal of the Ministers to revoke their decision of 8 January 1971.

11. On 16 November 1989 the Ministers of Finance and Culture and Sciences adopted another decision expropriating the applicant’s share in the plot of land.

12. The applicant's judicial review application of 2 February 1989 - which concerned the first ministerial decision of 1971 - was set for hearing by the Fourth Section of the Council of State on 6 November 1990. However, on that date the hearing was adjourned until 22 October 1991. Prior to that date, on 2 October 1991, the applicants filed a document with additional arguments (*dikografo prostheton logon akirosis*). On 22 October 1991 the hearing was again adjourned until 17 March 1992. On 17 March 1992 the Fourth Section decided to transfer the case to the Fifth Section. On 5 May 1993 the Fifth Section decided to adjourn the examination of the case until 3 November 1993.

13. Between September 1992 and April 1993 the lawyers were on strike.

14. On 10 May 1993 the applicants requested the Ministers of Finance and Culture and Sciences to revoke the expropriation decision of 1971, which had been confirmed in 1989. Having received no reply within the time-limit provided for in domestic law, on 16 August 1993 the applicants lodged a second application for judicial review before the Council of State challenging the second implied refusal of the two Ministers. The applicants requested that their second judicial review application be heard by the Fifth Section, together with the first, on 3 November 1993.

15. However, on that date the Fifth Section of the Council of State decided to adjourn the hearing of both judicial review applications. Further

adjournments were ordered on 9 February 1994, 23 March 1994, 6 April 1994 and 1 June 1994.

16. Then the applicants withdrew their first application for judicial review. Their second judicial review application was eventually heard on 22 June 1994. No decision has been rendered as yet.

AS TO THE LAW

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

17. The applicants complained that the length of the proceedings they instituted before the Council of State on 16 August 1993 gave rise to a violation of Article 6 § 1 of the Convention, which in so far as relevant provides:

> "In the determination of his civil rights and obligations …, everyone is entitled to a … hearing within a reasonable time …".

18. The applicants submitted that their case was not complex. The problems arising out of the prior expropriation of half of the plot were of a purely legal nature and could have been solved quickly. The lawyers' strike need not have delayed the proceedings significantly. The Council of State should have taken advantage of the strike to clear its backlog. In any event, the strike could not justify a five-year delay in the delivery of a judgment. The applicants' lawyer always protested against the adjournments.

19. The Government submitted that the applicants' case was complex because it concerned the expropriation of a 50% share of a plot of land. The owner of the other half had already accepted the expropriation. Moreover, the applicants' case was heard immediately after the end of the lawyers' strike. However, the strike, for which the Government were in any event not responsible, had created a backlog. Hence the delay in the delivery of a judgment.

20. The Court recalls that in its admissibility decision it found that the proceedings in question involved a determination of the applicants' civil rights and obligations within the meaning of Article 6 § 1 of the Convention.

21. The Court notes that the proceedings began on 16 August 1993 when the applicants lodged their application for judicial review and are still pending. They have, therefore, lasted nearly six years and seven months.

22. The Court recalls that the reasonableness of proceedings must be assessed in the light of the particular circumstances of the case and with the help of the following criteria: the complexity of the case, the conduct of the parties and the conduct of the authorities dealing with the case (see the

Vernillo v. France judgment of 20 February 1991, Series A no. 198, p. 12, § 30).

23. The Court considers that, on the one hand, the case was not particularly complex and the applicants did not cause any delays. On the other hand, the Council of State decided to adjourn the examination of the case on several occasions, i.e. on 3 November 1993, 9 February 1994, 23 March 1994, 6 April 1994 and 1 June 1994, before hearing it on 22 June 1994. The Government have not provided any explanation for the seven-month delay that resulted from these adjournments. Moreover, the Court notes that the lawyers' strike to which both parties referred had ended in April 1993, i.e. before the institution of the proceedings in question.

24. The Court also notes that there was a period of inactivity between the hearing of the applicant's judicial review application and today which has exceeded five years and eight months. The only explanation offered by the Government for this period of inactivity is the Council of State's case-load.

25. However, the Court does not find this explanation convincing. According to its case-law, it is for Contracting States to organise their legal systems in such a way that their courts can guarantee the right of everyone to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time (see the Vocaturo v. Italy judgment of 24 May 1991, Series A no. 206-C, p. 32, § 17). In the light of all the above, the Court considers that the length of the proceedings failed to meet the "reasonable time" requirement.

26. The Court concludes, therefore, that there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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. Non-pecuniary damage

28. The applicants claimed GRD 25,000,000 each for non-pecuniary damage.

29. The Government found this claim excessive. They considered that a finding of violation by the Court could constitute in itself adequate just satisfaction. In the alternative, they argued that GRD 750,000 would be a reasonable sum.

30. The Court considers that the applicants must have suffered some non-pecuniary damage as a result of the violation of their right under Article 6 § 1 of the Convention to a hearing within a reasonable time.

Making its assessment on an equitable basis, the Court awards each applicant GRD 2,000,000 for non-pecuniary damage.

B. Costs and expenses

31. The applicants claimed GRD 4,000,000 for costs and expenses for the domestic proceedings.

32. The Government did not make any comments.

33. The Court, making its assessment on an equitable basis, awards each applicant GRD 500,000 for costs and expenses.

C. Default interest

24. According to the information available to the Court, the statutory rate of interest applicable in Greece at the date of adoption of the present judgment is 6% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds*
   (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
   - 2,000,000 (two million) Greek drachmas in respect of non-pecuniary damage,
   - 500,000 (five hundred thousand) Greek drachmas for costs and expenses;
   (b) that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 28 March 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

N. BRATZA
President