



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

SECOND SECTION

CASE OF YAGTZILAR AND OTHERS v. GREECE

(Application no. 41727/98)

JUDGMENT

STRASBOURG

6 December 2001

FINAL

10/07/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Yagtzilar and Others v. Greece,

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

Mr A.B. BAKA, *President*,

Mr C.L. ROZAKIS,

Mr G. BONELLO,

Mrs V. STRÁŽNICKÁ,

Mr P. LORENZEN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr A. KOVLER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 29 June 2000 and on 20 September and 15 November 2001,

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

PROCEDURE

1. The case originated in an application (no. 41727/98) against the Hellenic Republic lodged with the European Commission of Human Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by ten Turkish nationals, Fatma Ayten Yagtzilar, Mustafa Aykut Yagtzilar, Yakut Yagtzilar, Nermin Baykal, Bahadır Atik, Feriha Neriman Atik, Alan Hosman, Mukaddes Saraçoğlu, Rikkat Karaoğlu and Kenan Haciosmanoğlu ("the applicants"), on 15 January 1998.

2. Relying on Article 6 § 1 of the Convention, the applicants complained of the unfairness and length of civil proceedings to which they had been parties. They also complained of an infringement of their right to peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1.

3. 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).

4. The application was allocated to the Second 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.

5. By a decision of 29 June 2000, the Chamber declared the application admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry].

6. A hearing took place in public the Human Rights Building, Strasbourg, on 20 September 2001 (Rule 59 § 2). The Greek Government (“the Government”) were represented by the Delegate of their Agent.

There appeared before the Court:

(a) *for the Government*

Mr P.. GEORGAKOPOULOS, Senior Adviser,
State Legal Council, *Delegate of the Agent,*
Mr V. KYRIAZOPOULOS, Adviser, State Legal Council,
Mr I. BAKOPOULOS, Legal Assistant, State Legal Council, *Counsel;*

(b) *for the applicants*

Mr P. YATAGANTZIDIS, of the Athens Bar, *Counsel,*
Ms E. METAXAKI, of the Athens Bar, *Adviser.*

The Court heard addresses by Mr Yatagantzidis, Ms Metaxaki and Mr Kyriazopoulos.

THE FACTS

7. In 1925 the Greek State occupied an olive grove of a total area of 3,877,000 sq. m in Chalkidiki (northern Greece) and assigned it to the Refugees’ Relief Committee (Επιτροπή Περιθάλψεως Προσφύγων) with a view to settling refugees from Asia Minor there following the mandatory exchange of populations with Turkey under the 1923 Treaty of Lausanne. The land was occupied without any compensation being paid to the owners of the olive grove, of whom the applicants are the heirs. The basis for the occupation was a government ordinance of 14 February 1923 authorising the expropriation and occupation of land before any compensation was paid to its owners. The ordinance was subsequently ratified by a constitutional resolution of 15 September 1924; its content was also incorporated into Article 119 of the 1927 Constitution.

8. On 21 August 1933, by decision no. 81/1933 of the Expropriations Committee of Chalkidiki (Επιτροπή Απαλλοτριώσεων Χαλκιδικής), the Greek State expropriated the land in question.

9. On 8 December 1933 the applicants lodged an application with the appropriate courts for compensation owed them by the State, which had in the meantime taken over from the Refugees’ Relief Committee. Following that application the following judgments, among others, were delivered:

(i) interlocutory decision (προδικαστική) no. 28/1934 of the Chalkidiki Court of First Instance ordering a number of expert assessments;

(ii) final decision no. 28/1936 of the Chalkidiki Court of First Instance assessing the final unit amount of compensation at 2,008 drachmas (GRD) per square metre; the parties appealed against that decision;

(iii) interlocutory judgment no. 54/1938 of the Salonika Court of Appeal setting aside the decision and ordering the parties to produce supplementary evidence;

(iv) decision no. 4/1939 of the President of the Chalkidiki Court of First Instance recognising that the applicants were entitled to the compensation assessed;

(v) judgment no. 155/1939 of the Salonika Court of Appeal quashing judgment no. 54/1938 and ordering the case to be remitted to the Chalkidiki Court of First Instance;

(vi) decision no. 89/1940 of the Chalkidiki Court of First Instance assessing the final unit amount of compensation at GRD 2,720 per square metre; the parties appealed against that decision, but the hearing was not held until 23 January 1961; in the meantime, on 29 April 1959, the applicants had lodged a further application with the Court of Appeal for an assessment of the compensation amount;

(vii) judgment no. 96/1961 of the Salonika Court of Appeal ordering a fresh expert assessment, which was begun in 1971 and completed in 1977; at a hearing on 13 February 1979 the applicants claimed GRD 110,000 per square metre and the State raised an objection on the ground that their right to compensation had lapsed;

(viii) interlocutory judgment no. 654/1979 of the Salonika Court of Appeal dismissing the objection raised by the State and ordering the applicants to justify their assessment of the value of their land;

(ix) judgment no. 1718/1981 of the Salonika Court of Appeal dismissing a further objection raised by the State that the right to compensation had lapsed and assessing the final unit amount of compensation at GRD 50,000 to GRD 180,000 per square metre; the State lodged an appeal on points of law against that judgment, raising the same objection again;

(x) judgment no. 1305/1983 of the Third Division of the Court of Cassation, setting aside the Court of Appeal's judgment on procedural grounds and remitting the case to the Fourth Division; subsequently, on 12 December 1983, the applicants lodged a fresh application with that court for a compensation amount to be assessed;

(xi) judgment no. 1684/1984 of the Fourth Division of the Court of Cassation ordering the case to be remitted to the Chalkidiki Court of First Instance to determine the merits of the applications lodged by the applicants on 29 April 1959 and 12 December 1983.

10. On 29 June 1988 the applicants resumed the proceedings before the Chalkidiki Court of First Instance. They also lodged a further application for a final unit amount of compensation to be assessed. They sought GRD 400 per square metre. In its observations in reply of 20 March 1989,

the State pleaded again that the applicants' right to compensation had lapsed.

11. A hearing was held on 22 March 1989. On 22 May 1989 the court ordered the applicants to justify their assessment of the value of their land. On 21 November 1991 the applicants requested the judge rapporteur to set a date for the hearing of witnesses. An expert assessment was also carried out.

12. On 28 February 1992 the applicants asked the court to set a hearing date. The hearing was held on 7 October 1992.

13. On 4 December 1992 the court decided to adjourn its examination of the case on the ground that an investigative measure (αυτοψία) had not been carried out (decision no. 239/1992).

14. On 16 June 1994 the applicants asked the court to fix a hearing date. The hearing was held on 1 September 1994.

15. On 24 October 1994 the Chalkidiki Court of First Instance dismissed as unfounded the objection raised by the State that the applicants' right to compensation had lapsed and determined the final unit amount of compensation at GRD 395 per square metre (decision no. 233/1994).

16. On 4 January 1995 the State lodged an appeal against that decision. It again raised the same objection.

17. On 17 July 1995 the Salonika Court of Appeal set aside decision no. 233/1994 on the ground that the lower court had incorrectly dismissed the objection raised by the State that the applicants' claim was statute-barred. Indeed, the Court of Appeal considered that the applicants' right to compensation had lapsed since at least 1971. Giving judgment on the merits, it dismissed the applicants' application of 29 June 1988 on the ground that as their claim was statute-barred, they no longer had *locus standi* (judgment no. 3156/1995).

18. On 6 December 1995 the applicants lodged an appeal on points of law. In their statement of grounds of appeal they submitted that the Court of Appeal had misinterpreted the facts and the constitutional and legislative provisions relating to the limitation of actions, and had wrongly assessed the evidence. They added that, in any event, the objection had already been dismissed by judgments nos. 654/1979 and 1718/1981 of the Salonika Court of Appeal. The applicants stressed, lastly, that they had never received any compensation for the expropriation of their land and that the objection now raised against them contravened the principle of good faith and infringed in particular their right to peaceful enjoyment of their possessions.

19. On 15 July 1997 the Court of Cassation, after examining all the grounds of appeal on points of law submitted by the applicants, dismissed their appeal on the ground that it was ill-founded (judgment no. 1302/1997).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE RIGHT OF ACCESS TO A TRIBUNAL

20. The applicants complained that they had not been given a fair hearing and that the Greek courts, in considering that their right to compensation had lapsed, had in fact deprived them of the right of access to the courts. They relied on Article 6 § 1 of the Convention, the relevant parts of which provide:

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

21. In the Government’s submission, the applicants had had ample access to the courts for the purpose of asserting their rights and had used the remedies available to them under Greek law. The Government submitted that it had to be accepted, in the interests of the proper administration of justice, that there were formalities to be observed in making a valid application to a national court. Accordingly, the dismissal of the application by the Court of Appeal and then the Court of Cassation was merely the foreseeable consequence of the omissions by the applicants in the conduct of the case. Furthermore, the Government maintained that the applicants had benefited from adversarial proceedings which had respected the principle of equality of arms. Lastly, the Government noted that both the Court of Appeal and the Court of Cassation had given full reasons for their decisions concluding that the applicants’ right to compensation had lapsed. In that connection the Government undertook a detailed analysis of the case-law and legal theory relating to the statute of limitations in support of their assertion that the applicants should have foreseen that their right to compensation would have lapsed.

22. The Court has held that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. This “right to a court”, of which the right of access constitutes one aspect, may be relied on by anyone who considers on arguable grounds that an interference with the exercise of his civil rights is unlawful and complains that he has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 § 1 (see, *inter alia*, *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, p. 18, § 36).

23. Further, it is apparent from the Court’s case-law that the right to a court is not absolute; it is subject to limitations permitted by implication, in

particular where the conditions of admissibility of an application are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired; lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Levages Prestations Services v. France*, judgment of 23 October 1996, *Reports of Judgments and Decisions* 1996-V, p. 1543, § 40).

24. In the instant case the applicants complained that the Court of Appeal and the Court of Cassation had misinterpreted the facts and the legal provisions relating to the limitation of actions and that this had resulted in a denial of justice.

25. The Court reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see *Edificaciones March Gallego S.A. v. Spain*, judgment of 19 February 1998, *Reports* 1998-I, p. 290, § 33). This applies in particular to the interpretation by courts of rules of a procedural nature such as time-limits governing the filing of documents or lodging of appeals (see, among other authorities, *Pérez de Rada Cavanilles v. Spain*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3255, § 43). The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention.

26. In the instant case the Court notes that for the period in respect of which it has jurisdiction *ratione temporis* – namely from 20 November 1985, the date on which Greece recognised the right of individual petition – the applicants did indeed have access to the Greek courts, but only to be told that their application was inadmissible on the ground that it was statute-barred. The Court reiterates that the fact that the applicants were able to use domestic remedies does not necessarily satisfy the requirements of Article 6 § 1: the degree of access afforded by the national legislation must also be sufficient to secure the individual's "right to a court", having regard to the principle of the rule of law in a democratic society (see *Golder*, cited above, pp. 16-18, §§ 34-35).

27. The Court notes that in the proceedings in question, which had begun in 1933, the State had on a number of occasions, from as early as 1979, unsuccessfully raised the objection that the application was statute-barred. It was not until 1995 – whereas one year earlier the Court of First Instance had assessed the amount of compensation due to the applicants – that the Court of Appeal upheld the State's objection for the first time and found that the applicants' right to compensation had lapsed, pointing out

that it had been statute-barred since at least 1971. Admittedly, the Court does not have jurisdiction to rule on the limitation of actions under domestic law or on the merits of the decision. It cannot fail to observe, however, that the fact that the applicants were told that their action was statute-barred at such a late stage of the proceedings, which they had been conducting in good faith and with sufficient diligence, deprived them once and for all of any possibility of asserting their right to compensation for their olive grove, which was first occupied and later expropriated by the Greek State.

28. The Court therefore considers that the applicants suffered a disproportionate restriction on their right of access to a court and that, accordingly, the essence of their right to a court was impaired.

There has therefore been a violation of Article 6 § 1 of the Convention with regard to the right of access to a tribunal.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE LENGTH OF THE PROCEEDINGS

29. Still relying on Article 6 § 1 of the Convention, the applicants also complained that the length of the proceedings in their case was excessive.

30. The Government argued that the applicants had substantially contributed to delaying the proceedings by lodging their applications late and failing to be diligent in the conduct of the case. The Government added that it was clear from the chronology of the proceedings that the judicial authorities, when able to do so, gave rulings within a reasonable time.

A. Period to be taken into consideration

31. The Court notes that in respect of the period for which it has jurisdiction *ratione temporis* the proceedings in question began on 29 June 1988 and ended on 15 July 1997. They therefore lasted nine years and sixteen days.

B. Reasonableness of the length of the proceedings

32. The Court reiterates that the reasonableness of the length of proceedings is to be assessed in the light of the 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 and the conduct of the applicant and of the relevant authorities (see, among many other authorities, *Richard v. France*, judgment of 22 April 1998, *Reports* 1998-II, p. 824, § 57, and *Doustaly v. France*, judgment of 23 April 1998, *Reports* 1998-II, p. 857, § 39).

33. Moreover, only delays imputable to the relevant judicial authorities can justify a finding that a reasonable time has been exceeded, contrary to

the Convention. Even in legal systems applying the principle that the procedural initiative lies with the parties, the latter's attitude does not absolve the courts from the obligation to ensure the expeditious trial required by Article 6 § 1 (see *Varipati v. Greece*, no. 38459/97, § 26, 26 October 1999, unreported).

34. With regard to the instant case, the Court observes that the applicants did in general conduct the case diligently. The finding is therefore inescapable that, regarding a period of more than nine years, the slowness of the proceedings resulted essentially from the conduct of the authorities and courts dealing with the case.

35. The Court reiterates that it is for the Contracting States to organise their judicial system in such a way that their courts are able to guarantee everyone the right to obtain a final decision on disputes concerning civil rights and obligations within a reasonable time. Accordingly, the Court cannot regard as "reasonable" the overall length of time which elapsed in the present case.

There has therefore been a violation of Article 6 § 1 of the Convention with regard to the length of the proceedings.

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

36. The applicants complained of an infringement of their right to the peaceful enjoyment of their possessions. They relied on Article 1 of Protocol No. 1, which provides:

"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."

37. The Government pointed out at the outset that the Court was not empowered to examine questions linked to the deprivation of property itself, such questions clearly being beyond its jurisdiction *ratione temporis*. In the Government's submission, it was the lack of any payment of compensation for expropriation which constituted an interference with the applicants' right to the peaceful enjoyment of their possessions. The applicants agreed with that submission and complained that, in depriving them of any compensation, judgments nos. 3156/1995 of the Salonika Court of Appeal and 1302/1997 of the Court of Cassation had imposed an excessive burden on them.

The situation complained of therefore falls within the first sentence of the first paragraph of Article 1 of Protocol No. 1, which lays down the principle of peaceful enjoyment of possessions in general terms (see *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, §§ 43 and 48, ECHR 2000-I). Accordingly, the Court must determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

38. In the applicants' submission this was not the case. They complained that the interpretation given in judgments nos. 3156/1995 of the Salonika Court of Appeal and 1302/1997 of the Court of Cassation on the issue of statute limitation wrongfully upset the fair balance between the requirements of the general interest and the respect due to their property right.

39. The Government maintained that the procedures available under domestic law afforded a sufficient remedy to ensure protection of the right to peaceful enjoyment of possessions. In particular, the relevant legislation provided for the payment of full compensation to be determined by the courts. Since the applicants had failed to lodge their applications within the statutory time-limits, it was their own fault that they did not receive any compensation. The Government identified three periods of inactivity attributable to the applicants: from 1941 to 1951, from 1951 to 1959 and from 1961 to 1971. In their submission, the applicants must have been sufficiently aware of the risk they ran by neglecting the proceedings for long periods. The requirement of proportionality had therefore been satisfied.

40. The Court reiterates that an interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 26, § 69). The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions (see *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 23, § 38).

Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on applicants. In this connection, the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference, and a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional

circumstances (see *The Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301-A, p. 35, § 71).

41. In the instant case the lengthy proceedings instituted following the occupation and the subsequent expropriation of the land in question ended without the applicants receiving compensation. The Court considers that the Government have not provided a convincing explanation of the reasons why the Greek authorities did not at any time pay compensation to the applicants or their heirs for the taking of their possessions. Admittedly, as indicated above, the Court cannot take the place of the Greek courts in ruling on the issue of the merits of statute-barring the applicants' right to compensation. However, the Court cannot fail to observe that, by operation of the statute of limitations, the applicants were awarded nothing, at the end of proceedings which had started in 1933, for pecuniary or non-pecuniary damage sustained as a result of their being deprived of their property, without compensation, for over seventy years (see, *mutatis mutandis*, *Malama v. Greece*, no. 43622/98, § 51, ECHR 2001-II).

42. The Court therefore considers that the lack of any compensation for the taking of the applicants' possessions upset, to their detriment, the fair balance that has to be struck between the protection of property and the requirements of the general interest.

Accordingly, there has been a violation of Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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."

44. Under the head of pecuniary damage the applicants sought, as their principal claim, the sum of 31,849,244,217 drachmas (GRD). In the alternative, they claimed GRD 28,111,566,571 plus non-capitalisable interest at the rate of 6% from 15 July 1997, which was the date of publication of judgment no. 1302/1997 of the Court of Cassation. In the further alternative, they claimed GRD 5,785,323,270 plus non-capitalisable interest at the rate of 6% from 20 November 1985, which was the date of recognition by Greece of the right of individual application. Under the head of non-pecuniary damage, the applicants claimed the token sum of GRD 340.75 (1 euro). They claimed, lastly, GRD 157,754,000 for costs and expenses.

45. The Government submitted that if, and in so far as, the Court were to find a violation of Article 1 of Protocol No. 1, it should give the parties an opportunity to submit further observations on the issue of just satisfaction.

46. The Court considers that the question of the application of Article 41 is not ready for decision. Accordingly, it reserves that question and in determining the further procedure will have regard to the possibility of an agreement between the Government and the applicants (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 6 § 1 of the Convention as regards the right of access to a tribunal;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the length of the proceedings;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
4. *Holds* that the question of the application of Article 41 of the Convention is not ready for decision; accordingly,
 - (a) *reserves* the said question in whole;
 - (b) *invites* the Government and the applicants to submit, within the forthcoming six months, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
 - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in French, and notified in writing on 6 December 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

András BAKA
President