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

FIRST SECTION

CASE OF SAKELLAROPOULOS v. GREECE

(Application no. 46806/99)

JUDGMENT

STRASBOURG

11 April 2002

FINAL

11/07/2002

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 Sakellaropoulos v. Greece,

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

Mrs F. TULKENS, *President*,
Mr C.L. ROZAKIS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 22 March 2001 and on 14 March 2002,

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

PROCEDURE

1. The case originated in an application (no. 46806/99) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Greek national, Mr Yeoryios Sakellaropoulos ("the applicant"), on 4 January 1999.

2. The Greek Government ("the Government") were represented by Mr V. Kyriazopoulos and Mr I. Bakopoulos of the Legal Council of the State, Acting Agents.

3. The applicant complained, *inter alia*, that, contrary to Article 6 § 1 of the Convention, the administrative proceedings he had instituted had not been heard within a reasonable time.

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 of the Rules of Court.

5. On 22 March 2001 the Court declared the application partly admissible.

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

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

8. The applicant had inherited half a mine producing fluoride, which on 28 January 1985 was assessed by an inspector. According to the Mining Code, minerals are owned by the State and may be assigned by the State to any person, in accordance with the provisions of the law. The main obligation of a mine owner is the exploitation of the mine (Articles 102 and s.). When the competent public service establishes that no exploitation or mining research is carried out in a mine in accordance with the provisions of the law, it forwards the pertinent particulars to the Mines Board which, after hearing the concerned parties, decides on the forfeiture of the right of ownership (Article 121).

9. On 30 April 1986 the applicant asked the Ministry of Industry not to declare that he had forfeited his rights over the mine. He claimed that the mine's production had dropped because its exploitation had provisionally become unprofitable.

10. On 17 July 1986 the Ministry of Industry declared that the applicant and the other two owners of the mine had forfeited their rights over it because they had remained idle during three years, between 1981 and 1983. During that period there was a crisis in the market as opposed to complete lack of demand for the mineral in question, as the applicant had claimed. The applicant was not given any compensation.

11. On 25 August 1986 the applicant and the two other owners lodged an appeal (προσφυγή) against the decision of the Ministry before the first-instance administrative court (Διοικητικό Πρωτοδικείο) of Athens. They alleged that the Ministry's decision did not contain adequate reasons. They pointed out in this connection that between 1981 and 1983 the mine was not idle. Its production had simply fallen because there was a crisis in the fluoride market. They also alleged that the inspector's report of 28 January 1985, on which the Ministry's decision was based, had not examined their claims. Finally, they alleged that the decision was unlawful because they should have been given an extra year in which to exploit the mine.

12. On 30 October 1987 the court rejected the appeal on the grounds that the mine had indeed remained idle, that it was up to the appellants to prove that there was a crisis in the market and that the fact that they had not been given an extra year was an irrelevant consideration under the relevant rules. This judgment was served on the applicant on 8 November 1998.

13. On 5 December 1988 the applicant and the two other owners appealed. A hearing was set down for 3 July 1990. On that date, on the applicant's request, the hearing was postponed for 22 November 1990.

14. On 14 December 1990 the Administrative Court of Appeal (Διοικητικό Εφετείο) of Athens ordered the production of a number of documents including the report of 28 January 1985. On 29 November 1991 it rejected the appeal considering, *inter alia*, that the crisis in the relevant

market could not justify the idleness of the mine, as the report of 28 January 1985 had wrongly accepted. The idleness could be justified only if there was no demand for the mineral in question whatsoever, a fact which the appellants did not prove. Finally, there was no obligation under the law for the authorities to grant the applicant an extra year. This judgment was served on the applicant on 21 July 1992.

15. On 17 August 1992 the applicant and the two other persons appealed in cassation. At first, the hearing was set down for 24 March 1993 but it was continuously postponed. A hearing was set down for 24 April 1996. On that date, the applicant appeared before the court and announced that one of the other appellants had died. The hearing was postponed and was finally held on 4 December 1996.

16. On 13 July 1998 the Council of State rejected the appeal considering, *inter alia*, that it was for the lower courts to assess the report of 28 January 1985.

THE LAW

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

17. The applicant complained that the length of the proceedings gave rise to a violation of Article 6 § 1 of the Convention, the relevant part of which provides:

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

18. The Government submitted that the case was a complex one and that the applicant had made two applications for the case to be adjourned. They also referred to the case-load of the Council of State.

19. The applicant replied that the two adjournments he asked for caused a delay of about twelve months which was insignificant compared with the total length of the proceedings.

A. Period to be taken into consideration

20. The Court notes that the proceedings started on 25 August 1986 when the applicant instituted proceedings before the first-instance administrative court and ended on 13 July 1998 with the judgment of the Council of State.

21. Therefore the proceedings lasted eleven years, ten months and nineteen days for three levels of jurisdiction.

B. Reasonableness of the length of the proceedings

22. The Court recalls that the reasonableness of the length of the 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, the conduct of the authorities dealing with the case and what was at stake for the applicant (see *Laino v. Italy* [GC], no. 33158/96, § 18, ECHR 1999-I).

23. As regards the instant case, even if it might have been of some complexity, the Court does not find that this can reasonably explain the length of the proceedings exceeding eleven years and ten months for three instances.

24. As to the applicant's conduct, the Court does not find it established that his two requests for adjournment have had any major impact on the total length of the proceedings.

25. The Court finds that there were certain lengthy periods imputable to the State authorities: The first such period started on 5 December 1988 when the applicant appealed against the first-instance judgment and ended on 3 July 1990 when the Court of Appeal first heard the case. The second period started on 17 August 1992 when the applicant appealed in cassation and ended on 24 April 1996 when the case was adjourned following one of the appellant's death. The third period started on 4 December 1996 when the Council of State heard the case and ended on 13 July 1998 when the final judgment was issued. The Government have not provided any convincing explanation for these delays.

26. Having regard to the delays imputable to the State and the overall duration of the proceedings, the Court concludes that the "reasonable time" requirement was not satisfied. There has accordingly been a breach 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. Damage

28. The applicant claimed 72,520,000 Greek drachmas (GRD) for pecuniary damage in respect of the loss of his rights over the mine. He also claimed GRD 8,000,000 for non-pecuniary damage.

29. The Government argued that the applicant should be granted GRD 1,000,000 for non-pecuniary damage.

30. The Court finds that no causal link has been established between the length of the proceedings and the loss of the applicant's rights over the mine. Therefore, the Court does not award the applicant any compensation for pecuniary damage.

31. On the other hand, the Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the proceedings. Making its assessment on an equitable basis, the Court awards the applicant EUR 6,000 as compensation for non-pecuniary damage.

B. Costs and expenses

32. The applicant claimed GRD 3,000,000 in respect of costs and expenses incurred in the domestic and Convention proceedings.

33. The Government argued that the applicant should be granted GRD 1,000,000 under this head.

34. According to the Court's established case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. The Court considers that the duration of the domestic proceedings has to some extent increased the applicant's legal expenses in these proceedings. Moreover, the applicant won his case in Strasbourg at least in part. In the light of all the above and making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 in respect of costs and expenses.

C. Default interest

35. 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 the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in

respect of non-pecuniary damage and EUR 5,000 (five thousand euros) in respect of costs and expenses, plus any tax that may be chargeable;
(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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 April 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Françoise TULKENS
President