



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

SECOND SECTION

CASE OF PIALOPOULOS AND OTHERS v. GREECE

(Application No. 37095/97)

JUDGMENT
(Just satisfaction)

STRASBOURG

27 June 2002

FINAL

06/11/2002

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 Pialopoulos and others v. Greece,

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

Mr A. BAKA, *President*,

Mr C.L. ROZAKIS,

Mrs V. STRÁŽNICKÁ,

Mr P. LORENZEN,

Mr M. FISCHBACH,

Mr E. LEVITS,

Mr A. KOVLER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 6 June 2002,

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

PROCEDURE

1. The case originated in an application (No. 37095/97) 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 four Greek nationals, Mr Michael Pialopoulos, Mr Aristophanes Alexiou, Mr Nikolaos Georgakopoulos and Mrs Aristeia Pialopoulos (“the applicants”), on 7 March 1997.

2. In a judgment delivered on 15 February 2001 (“the principal judgment”), the Court held that there had been a breach of Articles 1 of Protocol No. 1 and 6 § 1 of the Convention (§§ 62 and 70, and points 1 and 2 of the operative provisions).

3. Under Article 41 of the Convention the applicants sought just satisfaction of 9 356 000 000 drachmas (GRD) for the value of their property, plus 9 017 000 000 GRD for loss of income.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicants to submit, within six months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 78, and point 4 of the operative provisions).

5. The applicants and the Government each filed observations.

THE LAW

6. 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. Pecuniary damage

7. The applicants submit that due to the consecutive expropriations that were effected, they were in fact and in law precluded from exercising any of their lawful rights on their property and that their plot was *de facto* expropriated. Consequently, they submit that the compensation to which they are entitled should be based on an assessment of the value of their property in present values and an assessment of the income lost, had they been in a position to build and use the commercial centre, as initially planned.

8. The applicants maintain that the statement of facts of the case is based on the assumption that the expropriation procedure of 19 April 1993 would result in the payment of compensation for depriving the applicants from the use of the surface, while enabling them to build an underground parking. However, in as far as it concerns Greek law, this assumption is not correct, as compensation for partial expropriation of the surface is not provided by Greek law. As a result, and with regard to the reasoning of the Court in paragraph 77 of the principal judgment, the applicants claim that they are justified to claim compensation to be calculated at present market value and that the Greek law cannot provide any basis for determining the future of the applicant's property in accordance with the Convention.

9. The applicants stress that after the delivery of the principal judgment, they instructed the internationally reputed firm of Consultants Lambert Smith Hampton to prepare a new appraisal report assessing and calculating the amounts to be paid to the applicants. The firm concluded as follows: (a) the amount of total accumulated interest lost as a result of the non-payment of the indemnity of 732,000,000 GRD (the compensation fixed by judgment n° 833/89 of the First Instance Court as regards the first expropriation of their land) attained, on 31 March 2001, 2,898,888,752 GRD; (b) the interest lost because of the impossibility to build the underground parking attained on the same date 2,095,822,895 GRD; (c) the compensation due to the non-use of the surface and the impossibility to build on the surface of the land attained 9,368,308,941 GRD and (d) the compensation payable as a result of the income lost due to the inability of the applicants to use their property is fairly represented by the sum of 11,543,000,000 GRD. These amounts do

not concern the value of the property, which as stated in initial appraisal reports of the same consultants.

10. Finally, the applicants submit that the building licence expenses that would have been incurred in 1987 and the villa that was demolished in 1987, total today 86,000,000 GRD and 600,000,000 GRD respectively.

11. The Government remind that the impugned measures aimed at protecting the environment and town planning in an area overburdened by heavy construction. According to Articles 697 and 968 of the civil code, things of common use are outside the ambit of transactions and according to Article 1001 of the same code the ownership of an immovable extends to the space above and below the ground. As a result, by virtue of the decision to amend the town plan of 21 May 1990, the park and the underground parking will be the property of the State or the municipality. Until the amendment is materialised, Article 23 of decree 17-7 of 16 August 1923 prohibits the applicants from undertaking any construction works on their plot because it would be contrary to the future purpose of the plot.

12. Accordingly, the method of evaluation of the applicants' damage, as it transpires from paragraph 77 of the principal judgment, cannot be founded on the domestic relevant legislation. The only relevant method to be followed by the Court in order to assess the damage sustained by the applicants would be to calculate the interest due by the State in case it delays to fulfil a financial obligation, that is the interest due for the amount of 732,000,000 GRD awarded on 16 November 1989 by the First Instance Court and the rate of which is 6% per annum. Furthermore, the Court should also take into consideration the fact that the applicants could not have been paid immediately the above-mentioned compensation because they had to be identified as the persons entitled to compensation and this procedure could not be completed before the beginning of 1991. Consequently, the loss of interest should be calculated as from the beginning of 1991 and not from 1st March 1988 or 15 November 1989. Even assuming that the applicants had been able to build and run the underground parking, the proceeds would not exceed 430,026,401 GRD for the period June 1990-February 2001, according to the expert valuation prepared by the Economic Chamber of Greece at the request of the Municipal Council of Neo Psihiko.

13. Furthermore, the Government maintain that the applicants' damage has been covered by the gain in value of their plot from 1988 to 2001. On 15 March 2001, the applicants' plot valued 3,715,844,220 GRD following the introduction of objective criteria for the determination of the value of immovable property. That means that the fact that the expropriation had not been realised turned to the benefit of the applicants, because the value of their property today is five times higher than the amount awarded by the First Instance Court in 1989.

14. Finally, the Government submit that the claims of the applicants relating to the loss of income, following the impossibility to build a

commercial centre, as well as those relating to the expenses for a building permit are unfounded and have no causal link with the violation found by the Court. The applicants are not entitled either to claim compensation for the villa which they demolished on their plot, because it was in ruins and a compensation for it was already included in the judgment of 16 November 1989.

15. Having regard to the foregoing considerations, the Government submit that the finding of the violation constitutes sufficient just satisfaction in terms of Article 41 of the Convention.

16. In their response to the Government's observations, the applicants seem to provide revised figures for their claims. As regards the interest they would have received to date from the compensation fixed by the First Instance Court, they affirm that it should be calculated according to the market rate interest and would amount to 2,935,307,495 GRD until 30 September 2001. As regards the loss corresponding to the applicants' profit from the underground parking, it would amount to 2,377,552,184 GRD. In this respect account should be taken of the fact that the building permit provided for a three-storeys parking and not for a one-storey as it is erroneously submitted by the Government. As for the interest with regard to the impossibility to construct a building on the plot, it would be fairly represented by the amount of 10,224,361,862 GRD. To the extent that the Government seem to admit that the applicants' property has become public land owned by the Municipality, the total loss estimated by the Lambert Smith Hampton Consultants amounts to 23,272,102,337 GRD until 30 September 2001. Finally, and although this indication is irrelevant for the award of just satisfaction according to the criteria established by the Court in the principal judgment, the objective value of the land, pursuant to Greek practice, is three times higher than that mentioned by the Government (153,715,844,220 GRD).

17. The Court recalls at the outset that the applicants have not been deprived of their property which is still in their possession. Accordingly, their damage consists in the impossibility in which they found themselves over the years to exploit their plot. However, the Court cannot speculate on what the use of their property and their proceeds could have been, had the applicants been able to realise their assets according to their plans and expectations.

18. The Court considers it fair to award the applicants an amount which would correspond to the income which they would have received annually, had they deposited on a bank account for the period between 1989 and 2001 the sum of 732,000,000 GRD, that is the compensation provisionally fixed by the First Instance Court of Athens on 16 November 1989. In this connection, the Court will take into consideration, in order to assess the amount, an approximate average of the interest rate applicable to State

bonds and that applicable to safety accounts during that period, on the basis of the information provided by the applicants and the Government.

19. Making an assessment on an equitable basis, the Court awards the amount of 3,850,000 EUR.

B. Non-pecuniary damage

20. For non-pecuniary damage the applicants claim a minimum amount of 200,000,000 GRD.

21. For the Government an award of 1,000,000 GRD for each of the applicants would be sufficient to cover the non-pecuniary damage.

22. The Court considers that the successive decisions to expropriate the applicants' plot and the long-standing inability to use their property have caused the applicants non-pecuniary damage.

23. Making an assessment on an equitable basis, the Court awards jointly to the four applicants 40,000 EUR.

C. Costs and expenses

24. The applicants claim 80,000,000 GRD for the proceedings before the national courts and 150,000,000 GRD for those before the Court. They submit that, according to the Barristers' Code, the lawyer's fees are calculated in proportion to the claim in issue before the courts. In particular, the Code would impose a remuneration of 2% of the amount of the claim for the submission of the first writ and an additional 2% on the same amount for lodging the submission.

25. The Government submit that the costs and expenses claimed by the applicants are excessive. Furthermore, those allegedly incurred in Greece have no causal link with the violations found by the Court.

26. The Court notes that the applicants seem to have calculated the above-mentioned sums on the basis of the relevant national scales, in particular Legislative Decree No. 3026/1954 enacting the Barristers' Code, and in proportion to their claims for pecuniary damage.

27. It is settled case-law that the Court is not bound by the rules of domestic practice in this area (see, among many other authorities, the *Papamichalopoulos and Others v. Greece* judgment of 31 October 1995 (former Article 50), Series A No. 330-B, p. 62, § 47).

28. The Court cannot allow in full the applicants' claims, which are excessive. However, having regard to the circumstances of the case, the multiplicity and length of the national proceedings, both judicial and administrative, the Court considers it reasonable to award them 30,000 EUR, including value added tax.

D. Default interest

29. 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*

(a) that the respondent State is to pay the applicants, within three months the following amounts:

(i) 3,850,000 (three million eight hundred and fifty thousand) EUR in respect of pecuniary damage;

(ii) 40,000 (forty thousand) EUR in respect of non-pecuniary damage;

(iii) 30,000 (thirty thousand) EUR in respect of costs and expenses, together with any value-added 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;

2. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 June 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

András BAKA
President