CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF GEORGIOS PAPADOPOULOS v. GREECE

(Application no. 52464/99)

JUDGMENT

STRASBOURG

6 February 2003

FINAL

21/05/2003

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 Georgios Papadopoulos 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 S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 29 November 2001 and 16 January 2003,

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

PROCEDURE

1. The case originated in an application (no. 52464/99) 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 Georgios Papadopoulos (“the applicant”), on 14 July 1999.

2. The applicant was represented by Mr G. Bournous, a lawyer practising in Athens, and Mr J. Berasategi, a lawyer practising in Brussels. The Greek Government (“the Government”) were represented by Mr M. Apessos and Mrs V. Pelekou 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.

5. 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 (Rule 52 § 1).

6. By a decision of 29 November 2001 the Court declared the application partly admissible.

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

THE FACTS

8. The applicant was born in 1958 and lives in Aridaia.

9. The applicant and Mr D. Varsamas requested the Prefect (Νομάρχης) of Pella to grant them permission to search for ore minerals in two specific areas. On 26 September 1983 and 10 October 1983 the Prefect of Pella issued them with two such licences.

10. On 21 November 1985 and 4 December 1985 the applicant and Mr Varsamas, after conducting ore mineral research in the said areas, asked the Prefect of Pella to cede to them approximately 100.000 sq. meters of each area for exploitation. According to the Mining Code, minerals are owned by the State and may be assigned by it to any person, in accordance with the provisions of the law. The two applications were transmitted to the Minister of Industry.

11. On 14 April 1986 the Minister of Industry, following an opinion of the Geological and Mineral Research Institute (Ινστιτούτο Γεωλογικών και Μεταλλευτικών Ερευνών), rejected the applications on the ground that the raw material traced in the area by the applicant and Mr Varsamas was not ore minerals but rather quarry matter.

12. On 26 May 1986 the applicant and Mr Varsamas challenged before the First Instance Administrative Court of Athens the refusal of the authorities to cede the areas requested.

13. On 27 February 1987 the First Instance Administrative Court of Athens rejected their action (decision no. 3324/1987).

14. On 24 March 1987 the applicant and Mr Varsamas appealed to the Administrative Court of Appeal of Athens.

15. On 30 November 1987 the latter quashed the decision of the first instance court on the ground that the Minister of Industry should have prolonged the initial licences to conduct research instead of rejecting the applications for the cession of the areas in question (decision no. 4298/1987).

16. The State, the applicant and Mr Varsamas appealed in cassation to the Council of State on 21 and 22 January 1988 respectively, on the ground that the Administrative Court of Appeal had not interpreted and applied the relevant legislation correctly. The State requested the confirmation of the decision of the first instance court while the applicant and Mr Varsamas requested the cession of the relevant areas.

17. On 30 September 1991 the Council of State accepted the appeal of the State, set aside the decision of the Administrative Court of Appeal on the ground that it had not interpreted and applied the relevant legislation correctly and referred the case to the Administrative Court of Appeal for re-examination of the factual background. Having accepted the appeal of the State, the Council of State did not consider it necessary to examine the applicant's appeal (decision no. 2674/1991).

18. The Court of Appeal registered the case on 26 November 1991. On 3 April 1992 it delivered an interlocutory decision ordering the hearing of university professors who had examined samples of the ores (decision no. 1839/1992).

19. On 16 December 1992 the Court of Appeal considered that the disputed area should have been considered as containing ore minerals (decision no. 4367/1992).

20. On 4 March 1993 the State appealed on points of law against the latter judgement questioning the interpretation of the relevant legislation and the adequacy of its reasons.

21. In 1994 Mr Varsamas died.

22. On 18 January 1995 the Council of State quashed the decision of the Administrative Court of Appeal and sent the case back to it in order for the reasoning to be supplemented on certain factual matters. The Council of State considered that the Court of Appeal had not clarified why the exploitation of the ore minerals would be economically profitable (decision no. 247/1995). The Court of Appeal registered the case on 27 March 1995.

23. On 29 December 1995 the Administrative Court of Appeal delivered an interlocutory decision ordering the applicant to produce further evidence concerning the economic profitability of the exploitation of the ore minerals (decision no. 6145/1995).

24. On 23 December 1996, the Administrative Court of Appeal, having reconsidered the case, concluded in favour of the State, because the applicant did not adequately prove his allegations concerning the economic profitability (decision no. 5337/1996).

25. On 15 April 1997 the applicant appealed again to the Council of State arguing that the Court of Appeal did not provide adequate reasons, did not interpret the applicable legislation correctly and breached the *res judicata* principle.

26. On 17 December 1998 the Council of State dismissed the appeal in cassation (decision no. 4817/1998). The applicant received a copy of that judgment on 4 February 1999.

THE LAW

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

27. 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 ..."

28. The Government argued that the conduct of the national authorities was irreproachable.

A. Period to be taken into consideration

29. The Court notes that the proceedings started on 26 May 1986 when the applicant instituted proceedings before the First Instance Administrative Court and ended on 17 December 1998 with the judgment of the Council of State.

30. Therefore the proceedings lasted twelve years, six months and twenty-two days.

B. Reasonableness of the length of the proceedings

31. 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 in the dispute (see, among many others, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

32. 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 twelve years and six months. The Court further notes that the applicant's conduct did not cause any delay in the proceedings. It points out that the Government did not supply any explanation for the overall duration of the proceedings, which seems manifestly excessive.

33. The Court reiterates that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (*Frydlender v. France*, op. cit., § 45).

34. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court concludes that the length of the proceedings complained of was excessive and failed to satisfy the "reasonable time" requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed EUR 2,000,000.

37. The Government argued that the amount of just satisfaction awarded to the applicant should not exceed EUR 9,000.

38. The Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the proceedings. It decides, on an equitable basis, to award the applicant EUR 7,000 as compensation for non-pecuniary damage.

B. Costs and expenses

39. The applicant claimed EUR 377,291.76 for the costs and expenses he had incurred in the proceedings before the domestic courts and the Court.

40. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually incurred, were necessarily incurred and were also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). 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 (see *Sakellaropoulos v. Greece*, no. 46806/99, 11 April 2002).

41. Making its assessment on an equitable basis and with reference to the above-mentioned criteria, the Court awards the applicant EUR 5,000 under this head, including value added tax.

C. Default interest

42. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

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 7,000 (seven thousand euros) in respect of non-pecuniary damage and EUR 5,000 (five thousand euros) in respect of costs and expenses, including value added tax;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 February 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Françoise TULKENS
President