



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

FIRST SECTION

**CASE OF PAPASTAVROU AND OTHERS v. GREECE**

*(Application no. 46372/99)*

JUDGMENT  
(Merits)

STRASBOURG

10 April 2003

**FINAL**

*10/07/2003*



**In the case of Papastavrou and Others 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 20 March 2003,

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

**PROCEDURE**

1. The case originated in an application (no. 46372/99) against the Hellenic Republic 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 twenty-five Greek nationals (“the applicants”), whose names appear in the list appended hereto, on 6 October 1998.

2. The applicants were represented by Mr P. Yatagantzidis and Mrs E. Metaxaki, lawyers practising in Athens. The Greek Government (“the Government”) were represented by the Delegate of their Agent, Mr M. Apeossos, Senior Adviser at the State Legal Council and Mr K. Georgiadis, Legal Assistant at the State Legal Council.

3. The applicants alleged, in particular, a violation of Article 1 of Protocol No. 1.

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).

It 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 4 October 2001, the Chamber declared the application admissible in so far as it concerned the applicants’ complaint under Article 1 of Protocol No. 1. It declared the remainder of the application inadmissible.

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

7. 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.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

8. The applicants are involved in a long-standing dispute with the State concerning the ownership of land in Omorphokklisia in Galatsi forming part of a wider area called the “Veikou Estate” over which the State claims ownership. In 1923, 1928, 1931, 1932 and 1941 the State expropriated large parts of the Veikou Estate for various purposes in the public interest.

9. In an opinion (no. 23/1987) which was approved by the Minister of Finance in 1987 and confirmed by the same minister in 1992, the Public Estates Consultative Board said that the Veikou Estate belonged to the State, since Mr Veikos’s heirs had failed to prove that they had acquired property rights under title deeds or from adverse possession of the estate. On the basis of that opinion, the State Lands Authority registered the land possessed by Mr Veikos’s heirs and subsequently all the plots which had been transferred to third parties by the heirs as public estates. Various sets of proceedings brought against the State by Mr Veikos’s heirs and third parties are still pending in the domestic courts.

10. In 1934 the Minister of Agriculture decided to extend reforestation in Attica to a region which included the disputed land. According to that decision, the area had “consisted, before the destruction and deterioration of the forest vegetation ..., of pine-tree forest which [had] progressively deteriorated and was starting to disappear ...” (decision no. 108424/1934).

11. However, in a document of the Athens Forestry Commission of 16 November 1968 on city planning, it was stated that half the area concerned was agricultural and the other half scrubland covered by bushes and just five pine trees. The Forestry Commission expressed the opinion that the area had never been forest land and could not be reforested, since the decision of the Ministry of Agriculture of 1934 excluded from the scope of reforestation barren land or parcels owned by individuals. The Forestry Commission concluded that the city development plan could be extended to the area concerned. Two previous documents of the Ministry of Agriculture, dated 3 December 1948 and 11 September 1949, and an expert report concerning the Veikou Estate had arrived at the same conclusion.

12. On 10 October 1994 the prefect of Athens decided that an area within the Veikou Estate, including the disputed plot of land, should be

reafforested. It was expressly stated in the prefect's decision that the aim was "... to recreate the forest greenery that [had] been destroyed or [had] deteriorated by illegal quarrying and other illegal actions, such as land clearing and building, over an area covering 935,483,000 sq. m".

13. On 23 December 1994 the applicants challenged the prefect's decision of 10 October 1994 in the Supreme Administrative Court. They claimed that they were the owners of properties that had been created by the parcelling of the Veikou Estate and were located inside the area set aside for reafforestation. In particular, they contended that the prefect's decision sought to deprive them of any rights of possession or ownership in the contested plot. In their additional observations of 26 July 1996, they claimed that the underlying reason for the decision was an attempt by the State to create a dispute over the applicants' rights of possession or ownership, despite the fact that there was no basis in law for the decision, since the area had never been a forest in the past.

14. On 20 January 1995 the applicants invited the State to purchase the plot in question from them. The authorities did not reply.

15. On 6 April 1998 the Supreme Administrative Court declared the applicants' appeal inadmissible on the ground that the prefect's decision was not an operative one, since it simply confirmed the decision that had been issued by the Minister of Agriculture in 1934. In particular, the Supreme Administrative Court held that the 1934 decision remained in force because it had not been reversed by any other act of equivalent importance. Subsequent acts of the authorities, such as the interpretation of some aerial photographs, could not be considered as a fresh assessment of the situation capable of rendering the prefect's decision operative.

16. On 22 October 1999 the Athens Forestry Commission, following the procedure prescribed by Law no. 998/1979, classified 189,475 sq. m of land located within the area concerned by the prefect's decision of 10 October 1994. It concluded that only 20,650 sq. m of it was forest land and should be reafforested. The Forest Disputes Resolution Committee upheld that decision and an appeal is now pending before the Appeal Board.

17. In various judgments over the past few years the Greek courts have been called upon to decide the property status of parts of the Veikou Estate (judgments no. 8864/1995 of the Athens Court of First Instance, no. 8314/1996 of the Athens Court of Appeal, and no. 9632/2000 of the Athens Court of Appeal). The courts have recognised that a number of plots which were situated in the greater Veikou Estate did not constitute forest land but were private properties which were included in the city development plan. Other judicial decisions (judgments no. 13789/1977 of the Athens Court of First Instance, no. 7350/1978 of the Athens Court of Appeal, no. 696/1980 of the Court of Cassation, no. 1865/1992 of the Athens Court of First Instance, and no. 1783/1997 of the Athens Court of

First Instance) concluded that the greater area, which comprised the properties claimed by the applicants, had never been forest land in the past.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. The Constitution

18. The relevant provisions of the Constitution read as follows:

#### Article 24 § 1

“The State is under a duty to protect the natural and cultural environment. It shall adopt special preventive or repressive measures for the conservation of the environment. Matters pertaining to the protection of forests and forest areas in general shall be regulated by law. Any change in the use of public forests and public forest areas shall be prohibited, except where agricultural development or any other use is beneficial to the national economy or dictated by the national interest.”

#### Article 117 § 3

“Public or private forests or forest areas which have been or are destroyed by fire or otherwise deforested, shall not be divested for that reason of their previous status but shall be designated as reforestation areas and not used for any other purpose.”

19. The Government submitted that, for the purposes of Article 117 § 3, which under the Supreme Administrative Court’s established case-law is directly applicable, the statutory protection of forests continues without any limitation in time and notwithstanding illegal destruction or deforestation. Moreover, the designation of an area as a reforestation area and the prohibition of any use detrimental to reforestation are not left to the discretion of the authorities but are mandatory.

### B. The Protection of Forests and Forest Lands Act (Law no. 998/1979)

20. The relevant sections of Law no. 998/1979 read as follows:

#### Section 10(3)

“A Forest Disputes Resolution Committee shall be established at the seat of each prefecture with jurisdiction to settle disputes over the classification of all or part of an area as forest land and over the limits of such land.”

#### Section 14

“(1) If no forest register has been compiled, the classification of all or part of an area as forest land and the determination of the limits thereof ... shall be carried out, at the request of any person having a lawful interest or *ex officio*, by the competent forestry commission.

(2) ... The classification shall be notified to the person, legal entity or public service having submitted the request ...

(3) The prefect or any other person with a lawful interest may lodge an objection to the aforementioned classification within two months from the date of notification ... with the Committee mentioned in section 10(3) ... The Committee and the Appeal Board ... shall decide the objection by a reasoned decision within three months from the date it is filed ...”

#### Section 38(1)

“Forests and forest lands which are destroyed or deforested by fire or illegal logging shall be designated reforestation areas, regardless of any special category they may come into or their location ...”

#### Section 41

“(1) The decision to designate land as a reforestation area shall be taken by the competent prefect. It shall clearly indicate the limits of the area and be accompanied by a plan ...

(3) ... the decision of the prefect mentioned in subsection (1) shall be taken following a recommendation by the competent forestry inspector.”

21. The Government stressed that the aforementioned provisions establish a special judicial procedure for classifying an area as forest land and aim at settling disputes in a way that binds both the authorities and the individual.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

22. The applicants alleged a violation of Article 1 of Protocol No. 1, which reads as follows:

“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.”

23. Firstly, as they had already stressed in their observations at the admissibility stage, the applicants reiterated that the fact that the Government had not expressed any views on the substance of their complaint at that stage amounted to an indirect but clear recognition that there had been a violation.

24. Secondly, the applicants submitted that the taking of what they considered their property by the national and regional authorities amounted to a *de facto* expropriation without the payment of any compensation. In effect, by using various pretexts such as the existence of a forest in the remote past, the State had tried to “snatch” their property. Even if it was considered that the State had not deprived the applicants of their property, but had only restricted its use, it had not struck a fair balance between the right guaranteed by Article 1 of Protocol No. 1 and the limitation: in the present case no public interest could justify such a limitation being placed on the property concerned and the lack of any compensation which might have restored a fair balance. In that connection, the applicants stressed that under Law no. 998/1979, the State could purchase properties that were included in a reforestation scheme. The applicants had submitted a request to have their properties purchased but the competent authorities had never replied, thereby confirming the State’s refusal to pay the applicants any compensation.

25. The applicants produced a large number of judicial decisions (judgments no. 8864/1995 of the Athens Court of First Instance, no. 8314/1996 of the Athens Court of Appeal, and no. 9632/2000 of the Athens Court of Appeal) in which the Greek courts had decided the property status of the Veikou Estate. It transpired from those decisions that the courts had recognised that a number of parcels situated in the greater Veikou Estate did not constitute forest land but were private properties which were included in the city development plan. Other judicial decisions (judgments no. 13789/1977 of the Athens Court of First Instance, no. 7350/1978 of the Athens Court of Appeal, no. 696/1980 of the Court of Cassation, no. 1865/1992 of the Athens Court of First Instance, and no. 1783/1997 of the Athens Court of First Instance) had concluded that the greater area comprised by the applicants’ properties had never been a forest in the past.

26. The applicants stressed that the administrative authorities which decided on reforestation had referred to the area as a public domain and totally ignored the judicial decisions which were favourable to the applicants. The applicants further claimed that the disputed area could not constitute a forest because of the nature and composition of the topsoil and subsoil. Such a conclusion could be drawn from a series of technical reports

and expert valuations that had been carried out in 1993, 1995, 1996, 1997 and 2000 by foresters and even university professors and experts in geology and forestry. Furthermore, certain administrative documents or decisions (a Ministry of Agriculture forest map, a presidential decree of 28 August 1980 laying down building regulations for the area, a presidential decree of 11 November 1991 approving the development plan for the Galatsi area and an opinion of the Athens Forestry Commission of 14 November 1968) lent support to the view that the disputed land had always been considered as grazing or arable land. Moreover, in 1957 the authorities had delimited the forest land in the area without including in it the disputed plots.

27. In conclusion, the applicants maintained that no public interest could justify such a drastic limitation of their property rights, taking into account that any reforestation of the land was impossible because of the type and quality of the soil.

28. The principal thrust of the Government's argument was that no "possession" of the applicants, within the meaning of Article 1 of Protocol No. 1, had been interfered with. The Government considered that the State was the owner of the greater Veikou Estate and that only the Greek courts were competent to resolve the ownership status of the disputed plots.

29. The mere allegation by the applicants that they owned those plots, which were not precisely delineated in their application, did not prove that they did. In an attempt to prove their ownership rights over the disputed land, the applicants had relied on judicial decisions and administrative documents which concerned other properties (both as regards ownership of the land and its classification as forest land) and tried to use the European Court of Human Rights as a civil court which could resolve the issue of ownership of their plots or determine whether the disputed land had formed a forest in the past. However, no decision had been taken by the domestic courts as regards ownership of the applicants' plots. The Supreme Administrative Court had only examined whether the conditions for designating the land as a reforestation area were met, in particular whether the prefect's decision was lawful and sufficiently justified under Article 117 § 3 of the Constitution and the provisions of Law no. 998/1979. The determination of the ownership of the whole Veikou Estate was still pending before the domestic courts, as several actions had been brought (under Article 70 of the Code of Civil Procedure) claiming ownership of certain parcels. However, the applicants were not among the claimants.

30. The Government added that neither the judgment of the Supreme Administrative Court nor the prefect's decision to reforest had violated the applicants' rights under Article 1 of Protocol No. 1. In deciding the admissibility of the complaint under Article 6 of the Convention, the Court had held that the Supreme Administrative Court's finding that the prefect's decision was not an operative act was not arbitrary. Furthermore, under Article 117 of the Constitution, the protection of forests was guaranteed

without any limitation in time and notwithstanding any illegal destruction or deforestation. The decision to reforest was not left to the discretion of the authorities but had to be taken when necessary and when the conditions laid down in Article 117 were met. The Supreme Administrative Court had found, on the basis of a large amount of evidence, that it was probable that the disputed area had been a forest in the past. It followed that the prefect's decision was not arbitrary but dictated by reasons of public interest, namely the protection of the environment.

31. The Government contested the relevance of the documents which the applicants had produced in support of their case. They referred to other documents issued by the Athens Forestry Commission and to decision no. 1/2001 of the Forest Disputes Appeal Board, in which different conclusions had been drawn from those indicated in the applicants' documents.

32. Finally, the Government maintained that it was impossible for the State to purchase the disputed plots under the provisions of Law no. 998/1979, since it had always considered them to be its own property.

33. The Court reiterates that Article 1 of Protocol No. 1, which guarantees in substance the right of property, comprises three distinct rules (see *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37). The first, which is set out in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, contained in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule.

34. As regards the question whether there is a "possession" within the meaning of Article 1 of Protocol No. 1, it is not for the Court to settle the issue of ownership of the disputed land. The Government have underlined that the applicants failed to have ownership determined by the civil courts. The Court notes that the Government raised the objection that domestic remedies had not been exhausted on that point at the admissibility stage. The Court dismissed it on the ground that for the purposes of admissibility the only court with jurisdiction to quash the prefect's decision to reforest was the Supreme Administrative Court. As regards the merits, the Court notes the following: in their application to the Supreme Administrative Court, the applicants indicated the deeds on which they based their claim to ownership of the disputed land. Although it was not called upon to determine the issue of ownership, and indeed could not do so, the Supreme

Administrative Court accepted that the applicants, who “were considered owners”, had *locus standi*.

35. For the purposes of the proceedings before the Court, the applicants may therefore be regarded as the owners of the land in issue or at least as having an interest that would normally be protected by Article 1 of Protocol No. 1.

36. The Court takes note of the Government’s arguments that the protection of forests is guaranteed without limitation in time and notwithstanding illegal destruction or deforestation. Moreover, the designation of an area as an area to be reforested and the prohibition of any use that would prevent reforestation is not left to the discretion of the authorities but is mandatory and the Supreme Administrative Court has scrupulously enforced these principles in order to safeguard the country’s forestry resources. The Court also notes that the applicants dispute that the prefect’s decision to reforest in the present case was taken in the public interest, because the geology of the whole area was not suitable for forestation. The Court notes that there is a large amount of conflicting evidence as to the nature of the land in issue. As both parties have pointed out, there were judicial and administrative decisions, expert valuations and other documents that could be used to support their cases. However, it is not for the Court to decide such a technical matter.

37. The Court notes that the prefect’s decision of 10 October 1994 was based on decision no. 108424/1934 of the Minister of Agriculture. In the Court’s opinion, the authorities were at fault for ordering such a serious measure that affected the position of the applicants and a number of other persons who claimed property rights over the land without a fresh reassessment of the situation as depicted in decision no. 108424/1934. However, the Supreme Administrative Court rejected the applicants’ application on the sole ground that the prefect’s decision was not an operative one, since it simply confirmed the decision that had been issued by the Minister of Agriculture in 1934. Such a manner of proceeding in such a complex situation in which any administrative decision could weigh heavily on the property rights of a large number of people cannot be considered consistent with the right enshrined in Article 1 of Protocol No. 1 and does not provide adequate protection to people such as the applicants who bona fide possess or own property, in particular, when it is borne in mind that there is no possibility of obtaining compensation under Greek law.

38. The Court considers that the situation of which the applicants complain comes within the first sentence of the first paragraph of Article 1 of Protocol No. 1 and that there was no reasonable balance struck between the public interest and the requirements of the protection of the applicants’ rights.

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

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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.”

41. For pecuniary damage the applicants claimed 504,482,000 drachmas (GRD), or 1,480,505 euros (EUR). This amount is based on an expert valuation carried out by a civil engineer appointed by the applicants to assess the value of all the disputed plots. The expert based the assessment on the market value of the neighbouring properties and on a judgment of the Athens Court of First instance which determined the amount payable per square metre in compensation for property expropriated for the purposes of holding the Olympic Games in 2004.

42. As regards non-pecuniary damage the applicants said that a judgment of the Court holding that there has been a violation of Article 1 of Protocol No. 1 would constitute sufficient just satisfaction and they claimed a token compensation of one euro. They affirmed that the interference of the State with their properties had caused them distress and anxiety and that the predicament in which they had found themselves was quite serious, as most of them had purchased the properties at a very high cost at the time with limited resources.

43. As regards costs and expenses for the proceedings before the Supreme Administrative Court, the applicants claimed GRD 200,000 per expropriated plot, that is a total of GRD 4,800,000, or EUR 14,087. As to the proceedings before the Court the applicants underlined the complexity of the case and the fact that they had had to retain two lawyers, who had spent 980 hours working on the file at an hourly rate of GRD 50,000 (total: GRD 49,000,000, or EUR 143,800). To that sum should be added an amount of GRD 1,000,000 for various secretarial expenses and of GRD 1,000,000 for the fees of the civil engineer who had assessed the value of applicants' properties.

44. The Government submitted that the applicants had no right to compensation: on the one hand, they had not been recognised as owners of the disputed plots by the civil courts and, on the other, the decision to reafforest did not prohibit all uses of the land but only uses that would hinder reafforestation and were inconsistent with the designation of the plots as forest land. The Government reiterated that they contested the exact location and surface area of the plots.

45. The Government submitted that the applicants' claims for costs were exaggerated and arbitrary. In particular, the number of hours worked and the hourly rate indicated by their lawyers were excessive.

46. In the circumstances of the case, the Court considers that the question of the application of Article 41 is not ready for decision and must be reserved, due regard being had to the possibility of an agreement between the respondent State and the applicant.

### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
2. *Holds* that the question of the application of Article 41 is not ready for decision; accordingly,
  - (a) *reserves* the said question in its entirety;
  - (b) *invites* the Government and the applicant to submit, within the forthcoming three 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 English, and notified in writing on 10 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Deputy Registrar

Françoise TULKENS  
President

## Appendix

### *List of applicants*

Stavros Papastavrou  
Demosthenis Boubas  
Nikolaos Tzouvalas  
Antonios Frangouloupoulos  
Petros Papathanasiou  
Eleni Katsifou  
Vasiliki Tsouri  
Ioannis Hilaris  
Chrysanthi Hilari  
Sonia Nalpantidou  
Efrosini Petropoulou  
Mavroudis Mitsopoulos  
Georgia Mylona-Mitsopoulou  
Dimitra Kordylla  
Menelaos Vamvakaris  
Andreas Douros  
Vasilios Spanoudakis  
Eleni Tsiligianni  
Evangelos Papamavroudis  
Maria Giakoumaki  
Panagiotis Karras  
Angelos Sfindilis  
Georgios Ravanis  
Olympia Karentzou  
Alkiviadis Pilios