



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

FIRST SECTION

**CASE OF EFSTATHIOU AND MICHAILIDIS & Co. MOTEL  
AMERIKA v. GREECE**

*(Application no. 55794/00)*

JUDGMENT

STRASBOURG

10 July 2003

**FINAL**

*10/10/2003*



**In the case of Efstathiou and Michailidis & Co. Motel Amerika v. Greece,**

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

Mr P. LORENZEN, *President*,

Mr C.L. ROZAKIS,

Mrs F. TULKENS,

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 30 April 2002 and on 19 June 2003,

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

## PROCEDURE

1. The case originated in an application (no. 55794/00) 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, Ms Anastasia Efstathiou, and the company Michailidis & Co. Motel Amerika (“the applicants”) on 7 March 2000.

2. The applicants were represented before the Court by Mr K. Horomidis, of the Salonika Bar. The Greek Government (“the Government”) were represented by their Agent's Delegates, Mr M. Apessos, Senior Adviser, State Legal Council, and Ms V. Pelekou, Legal Assistant, State Legal Council.

3. The applicants complained under Article 1 of Protocol No. 1, *inter alia*, that it had been impossible for them to obtain full compensation for the expropriation of parts of their land.

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 30 April 2002 the Chamber declared the application partly admissible.

7. The applicants, but not the Government, filed observations on the merits (Rule 59 § 1). They submitted claims for just satisfaction and the Government submitted observations in reply.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

8. The first applicant was born in 1930 and lives in Salonika. The second applicant is a commercial partnership with its registered office in Pieria (northern Greece).

9. On 7 July 1994, by means of a joint decision of the Minister of Finance and the Minister of Public Works (no. 1078361/4744/0010), the Greek State expropriated property covering a total surface area of 455,024 sq. m, with a view to improving certain sections of the main road between the towns of Platamonas and Katerini in Pieria. The expropriation affected 2,455.12 sq. m of land belonging to the first applicant and 2,401 sq. m belonging to the second (entered in the land register as plots nos. 64 and 214 respectively). The administrative authorities decided that the applicants should not receive any compensation in respect of 716.40 sq. m of plot no. 64 and 490 sq. m of plot no. 214, as they were deemed to have derived benefit from the construction of the road.

10. On 7 June 1995 the State applied to the Katerini Court of First Instance for an assessment of the provisional unit amount of compensation per square metre. The first applicant was not summoned to appear in court.

11. On 14 June 1996 the court determined the provisional amount of compensation for plot no. 214. It also assessed the amount of special compensation for the unexpropriated parcels of land at 100,000,000 drachmas (GRD) (judgment no. 118/1996).

12. The applicants subsequently applied to the Salonika Court of Appeal for the assessment of the final amount of compensation for the expropriation. In their observations, they submitted that the irrebuttable presumption in law that owners of property fronting a public highway derived benefit from the expansion of the highway was contrary to Article 17 of the Constitution and Article 1 of Protocol No. 1 to the Convention.

13. In an interlocutory decision of 18 June 1997 the Court of Appeal observed that, in assessing the unit amount of compensation for property expropriated with a view to building a main road, the court merely determined the amount, without considering whether and to what extent the adjoining owners had an obligation to contribute to the expropriation costs

pursuant to section 1 of Law no. 653/1977. It ordered an expert assessment of the real value of the expropriated property (judgment no. 2380/1997).

14. On 29 September 1999 the Court of Appeal assessed the final unit amount of compensation for the expropriation of plots nos. 64 and 214 at GRD 8,000 per square metre. It also assessed the final amount of special compensation for the unexpropriated parcels of plot no. 64 at GRD 45,142,390 (judgment no. 2741/1999).

15. On 18 March 2000 the applicants appealed on points of law. They argued that the fact that the Court of Appeal had merely determined the amount of compensation for the expropriation, without considering whether and to what extent the adjoining owners had an obligation to contribute to the expropriation costs, was contrary to Article 17 of the Constitution, Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

16. In a judgment of 23 March 2001 the Court of Cassation dismissed the appeal, at least in so far as it concerned the present case (judgment no. 480/2001).

## II. RELEVANT DOMESTIC LAW AND PRACTICE

17. Article 17 of the Constitution provides:

“1. Property shall be protected by the State; rights deriving therefrom, however, may not be exercised contrary to the public interest.

2. No one may be deprived of his property unless it is for the public benefit, which must be duly proved, in the circumstances and manner laid down by law and only after full compensation corresponding to the value of the expropriated property at the time of the court hearing on the provisional determination of compensation. In cases in which an application is made for immediate final assessment of compensation, regard shall be had to the value of the expropriated property at the time of the court hearing of the application ...”

18. Legislative Decree no. 797/1971 of 30 December 1970 and 1 January 1971 is the main legislative provision governing expropriations. It applies the principles set out in the constitutional provisions. By Article 13 § 1, compensation is calculated by reference to the real value of the expropriated property on the date of publication of the decision giving notice of the expropriation.

Paragraph 4 of that Article provides:

“Where part of a property is expropriated and the part remaining in the owner's possession suffers substantial depreciation in value or is rendered unusable, the judgment in which compensation is assessed shall also include a determination of the special compensation for that part. This special compensation shall be paid to the owner together with the compensation for the expropriated part.”

19. The relevant provisions of section 1 of Law no. 653/1977 of 25 July and 5 August 1977 on the obligations of adjoining owners where major roads are built are worded as follows:

“(1) Where a major road up to thirty metres wide is built in an area not covered by a town development plan, adjoining owners who derive a benefit shall be required to pay for an area fifteen metres wide, thus contributing to the cost of expropriating the properties bordering the road. However, the area to which this obligation applies shall not exceed half the surface area of the property concerned.

...

(3) For the purposes of this section, adjoining owners whose properties front the roads that have been built shall be deemed to have derived benefit.

(4) Where those entitled to compensation on account of an expropriation are themselves liable for payment of part of that expropriation, there shall be a set-off between rights and obligations.”

20. For a long time, this presumption that the benefit derived from road improvements amounted to sufficient compensation was regarded as irrebuttable. Following the Court's judgments in *Katikaridis and Others v. Greece*, *Tsomtsos and Others v. Greece* (judgments of 15 November 1996, *Reports of Judgments and Decisions* 1996-V) and *Papachelas v. Greece* ([GC], no. 31423/96, § 49, ECHR 1999-II), the national courts now accept that the presumption is no longer irrebuttable. Consequently, the owners concerned may apply to the civil courts for a declaration that they have not derived benefit within the meaning of the law cited above and, where appropriate, for additional compensation (see judgment no. 10737/1998 of the Athens Court of Appeal, which, ruling on a similar application in another case, ordered an expert assessment of whether the applicants, as adjoining owners, had actually derived any benefit from the expropriation of their property).

## THE LAW

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

21. The applicants complained that their properties had been expropriated without payment of full compensation for all the parts concerned. Under section 1 of Law no. 653/1977 they had been deemed to have derived benefit from the construction of the road and had accordingly had to contribute to the cost of expropriating their properties, even though the national courts had ruled that the unexpropriated parts had suffered substantial depreciation in value, and had awarded them special compensation on that account. The applicants 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.”

22. The Court observes that, in its decision on the admissibility of the application, it joined to the merits the Government's preliminary objection that the applicants had failed to exhaust domestic remedies as they had not applied to the civil courts for a declaration that they were not owners who had derived benefit within the meaning of the law in issue and, if appropriate, for additional compensation.

23. As to the merits, the Government submitted that the compensation awarded by the domestic courts in the instant case had been reasonably in line with the value of the expropriated properties.

24. The applicants asserted that the payment of compensation by the domestic courts for the unexpropriated parts of their land, on account of the depreciation in their value, was tantamount to a binding acknowledgment that their properties could not be deemed to have derived benefit and be subject to the “self-compensation” provided for in Law no. 653/1977. Consequently, owners should not be required to bring a further action in the court of first instance to obtain a fresh assessment of whether they, as adjoining owners, had derived benefit, since that issue had already been finally determined by the domestic courts. In the applicants' submission, the obligation to bring such an action was contrary to Article 1 of Protocol No. 1 and infringed the “reasonable time” requirement in Article 6 § 1 of the Convention, as it would take at least four or five years for a final decision to be given in the ensuing proceedings.

25. The applicants referred to the conditions laid down in Article 17 § 2 of the Constitution as to the award of full compensation in advance, and submitted in conclusion that they had suffered a significant pecuniary loss upsetting the fair balance that should be struck between the protection of the right of property and the requirements of the general interest.

26. The Court reiterates that an interference with the right to the peaceful enjoyment of possessions must strike a “fair balance” between the demands of the general interest 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). Compensation terms under the relevant legislation are material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicant. In this connection, the taking of

property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under Article 1 of Protocol No. 1. That Article does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of “public interest” may call for less than reimbursement of the full market value (see *The Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301-A, pp. 34-35, §§ 70-71).

27. The Court observes that in *Katkaridis and Others* and *Tsomtsos and Others* it criticised the irrebuttable presumption created by section 1(3) of Law no. 653/1977. It held that this system was too inflexible and took no account of the diversity of situations, ignoring as it did the differences due in particular to the nature of the works and the layout of the site, and accordingly found a breach of Article 1 of Protocol No. 1 (see *Katkaridis and Others*, pp. 1688-89, § 49, and *Tsomtsos and Others*, pp. 1715-16, § 40, both cited above).

28. In the light of those judgments, the Greek courts have abandoned their position that the presumption that owners derive a benefit from road improvements is irrebuttable. The civil courts that assess the unit amount of compensation no longer have jurisdiction to determine whether or not the owners of expropriated land derive benefit from roadworks; consequently, owners who consider themselves to have been prejudiced must institute a further set of proceedings in the civil courts.

29. The Court considers that, where an individual's property has been expropriated, there should be a procedure ensuring an overall assessment of the consequences of the expropriation, including the award of an amount of compensation in line with the value of the expropriated property, the determination of the persons entitled to compensation and the settlement of any other issues relating to the expropriation.

30. The Court notes that, although the national courts now accept that the presumption that the benefit derived from road improvements amounts to sufficient compensation is no longer irrebuttable, there has been no significant improvement in the system for compensating those whose property has been expropriated. Indeed, the presumption still exists and the courts that determine the amount of compensation do not take into account the nature of the work carried out or whether it benefits the owners. Instead, the system now in place requires owners who consider themselves to have been prejudiced by such work to make a fresh application to the civil courts in order to prove that their property has in fact been adversely affected. Furthermore, those proceedings may be prolonged if one of the parties decides to make use of the remedies available to it, in which case they will be conducted in addition to the proceedings for the assessment of the unit amount of compensation, which themselves comprise three stages: assessment of the provisional unit amount, assessment of the final amount, and determination of those entitled to the compensation.

31. Furthermore, the Court finds it contradictory to award special compensation, as in the instant case (under Article 13 § 1 of Legislative Decree no. 797/1971), for the depreciation in the value of the unexpropriated part of the land and yet to maintain, in accordance with the presumption, that the property has been enhanced by the work.

32. The Court reiterates that the Convention is intended to guarantee rights that are not theoretical or illusory, but practical and effective (see *Matthews v. the United Kingdom* [GC], no. 24833/94, § 34, ECHR 1999-I). As regards the accessibility of a remedy within the meaning of Article 35 § 1 of the Convention, this implies, *inter alia*, that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy. That did not happen in the present case and the preliminary objection in question must therefore be dismissed.

33. In the light of the foregoing, the Court considers that, in maintaining the “self-compensation” presumption and requiring the owners concerned to bring several sets of proceedings in order to be entitled to an amount of compensation reasonably in line with the value of the expropriated property, the authorities upset the fair balance that should be struck between the protection of individual rights and the requirements of the general interest.

There has therefore been a violation of Article 1 of Protocol No. 1.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. As regards pecuniary damage in respect of the square metres of land for which they had not received compensation, the applicants claimed the final amount determined by the Salonika Court of Appeal (8,000 drachmas per square metre – see paragraph 14 above), plus 60% or default interest at a rate of 6% per annum from the date of that judgment. The applicants also sought 5,870 euros (EUR) each for non-pecuniary damage.

36. The Government submitted that any pecuniary damage sustained could not exceed the figure obtained by multiplying the judicially determined unit amount for the expropriated properties by the number of square metres for which compensation had not been awarded. They argued that there was no reason to increase that amount, “because the value of the properties has not changed in the past three years as inflation has

stabilised". They further considered that the finding of a violation of the Convention would constitute sufficient just satisfaction for any non-pecuniary damage sustained by the applicants.

37. The Court observes that in the instant case it has found a violation of Article 1 of Protocol No. 1 in that existing procedures have made it unreasonably complicated for those whose property has been expropriated to claim an adequate amount of compensation. It cannot therefore afford the applicants the same degree of redress as it would have done if domestic law had excluded the possibility of compensation for the remaining square metres of their property. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the two applicants jointly EUR 20,000 for pecuniary damage. As regards the alleged non-pecuniary damage, the Court considers that it has been sufficiently compensated by the finding of a violation of Article 1 of Protocol No. 1.

#### **B. Costs and expenses**

38. The applicants sought reimbursement of the costs and expenses incurred before the Court, but left the amount to the Court's discretion.

39. The Government submitted that costs and expenses had to be necessarily incurred and substantiated.

40. The Court notes that the applicants have not submitted any bill of costs and fees. It accordingly dismisses their claim.

#### **C. Default interest**

41. 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. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds*
  - (a) that the respondent State is to pay the two applicants jointly, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros) in respect of pecuniary damage, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in French, and notified in writing on 10 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Deputy Registrar

Peer LORENZEN  
President