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

FIRST SECTION

CASE OF KATSOULIS AND OTHERS v. GREECE

(Application no. 66742/01)

JUDGMENT

STRASBOURG

8 July 2004

FINAL

08/10/2004

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 Katsoulis and Others v. Greece,

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

Mr P. LORENZEN, *president*,
Mr C.L. ROZAKIS,
Mr G. BONELLO,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr K. HAJIYEV, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 6 May 2003 and on 17 June 2004,

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

PROCEDURE

1. The case originated in an application (no. 66742/01) 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 thirty-nine Greek nationals ("the applicants"), whose names appear in the list annexed hereto, on 6 December 2000.

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

3. The applicants alleged that their property rights as guaranteed by Article 1 of Protocol No. 1 had been violated. They also complained under Article 6 § 1 of the Convention about the length of the proceedings that they had instituted before the Supreme Administrative Court.

4. The application was allocated to the First 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 6 May 2003, the Court declared the application partly admissible.

6. The applicants, but not the Government, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants are involved in a long-standing dispute with the State concerning the ownership of a plot of land known as "Omorphokklisia" in Galatsi, a suburb of Athens. This land is included in a wider area called the "Veïkou Estate". The applicants have so far obtained a number of rulings in their favour from the civil courts and the public prosecutors of the Athens first instance and appeal courts. On several occasions, the State authorities have either claimed that the land in question was a forest or that it was not.

8. In 1934 the Ministry of Agriculture took a reforestation decision (no. 108424/1934) concerning a wider region in Attica, which included Athens, Piraeus and the suburbs. According to that decision, the area "consisted, before the destruction and downgrading of the forest vegetation ..., of pine-tree forest which was progressively downgraded and tended to disappear ..."

9. In a document of the Forest Inspection of Athens of 14 November 1968, it was stated that half of the area which included the applicants' land was agricultural and half covered by bush and five pine-trees. The Forest Inspection expressed the opinion that, considering the morphology of the area, it has never been a forest and could not be reforested, since the decision of the Ministry of Agriculture of 1934 excluded from the scope of the reforestation barren lands or plots owned by individuals. The Forest Inspection concluded that the city plan could be extended to the impugned area.

10. On 6 September 1994 the prefect of Athens declared an area within the Veïkou Estate, including the applicants' land, "reafforestable" (it should be turned back into a forest). As it was expressly stated in the prefect's decision, the aim was "... to recreate the forest greenery destroyed or downgraded by illegal quarry activities and other illegal actions such as land clearing, constructions etc. in an area of 284 000 square meters" (decision no. 3015/1994). On 10 October 1994 the prefect took a similar decision for another area of the Veïkou Estate.

11. On 10 November 1994 the applicants challenged decision no. 3015/1994 before the Supreme Administrative Court. They claimed that they were owners of properties that originated from the parcelling of a broader area included in the major area known as "Veïkou Estate" and which were located inside the reafforestable area. In particular, in their appeal, they contended that the prefect's decision lacked reasons and aimed at depriving them of any property or possession rights on the contested plot. In their additional observations of 3 March 1999 they claimed that the prefect's decision was an operative act, in particular because it was issued

after a new assessment of the factual situation (pages 55-59 of the applicants' memorial). They further contended that the cause of the adoption of that decision was the attempt of the State to create a dispute over their property or possession rights, although the legal conditions for the issuance of such a decision were not met since the area never constituted a forest in the past.

12. On 14 December 1994 the applicants invited the State to purchase the plot in question from them according to the procedure prescribed by Law no. 998/1979. The authorities did not reply.

13. On 22 October 1999 the Forest Inspection of Athens qualified as "reafforestable" according to the procedure prescribed by Law no. 998/1979 an area of approximately 189 sq. m. located within the area concerned by the prefect's decision of 10 October 1994 (see paragraph 10 above). The Forest Inspection concluded that only 20 sq. m. of that surface was forest and should be reforested. The Committee for the Settlement of Forest Disputes confirmed that decision and an appeal is now pending before the Appeal Committee.

14. On 5 June 2000 the Supreme Administrative Court accepted that the applicants, who "were considered owners", had *locus standi.* It declared their appeal inadmissible on the ground that the prefect's decision was not an operative act since it simply confirmed the decision issued by the Minister of Agriculture in 1934. In particular, the court held that the decision of 1934 remained in force because no other act, of an equivalent force, had reversed it. The subsequent acts of the Administration, such as the interpretation of some aerial photos, could not be considered as a new assessment of the situation which could give to the decision of the prefect an operative character (judgment no. 1968/2000).

15. In various judgments delivered during the past years the Greek courts have had the occasion to decide the property status of part of the Veïkou Estate (judgments nos. 8864/1995 of the Athens First Instance Court, 8314/1996, 9632/2000 of the Athens Court of Appeal and 1359/2002 of the Court of Cassation). The courts have recognised that a number of plots which were situated in the greater area of the Veïkou Estate did not constitute a forest but were private properties which were included in the development plan of the city. Some other judicial decisions (judgments nos. 13789/1977, 1865/1992 and 1783/1997 of the Athens First Instance Court, 7350/1978 of the Athens Court of Appeal and 696/1980 of the Court of Cassation), concluded that the greater area, which comprised the properties claimed by the applicants, had never been a forest in the past.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

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

Article 24 § 1

"The protection of the natural and cultural environment constitutes a duty of the State. The State is bound to adopt special preventive or repressive measures for the preservation of the environment. Matters pertaining to the protection of forests and forest areas in general shall be regulated by law. Alteration of the use of State forests and State forest areas is prohibited, except where agricultural development or other uses imposed for the public interest prevail for the national economy."

Article 117 § 3

"Public or private forests or forest areas which have been destroyed or are being destroyed by fire or have otherwise been deforested or are being deforested, shall not thereby relinquish their previous designation and shall compulsorily be proclaimed reafforestable, the possibility of their disposal for other uses being excluded."

17. The Government submit that, in the sense of Article 117 § 3 (which, in accordance with the established case-law of the Supreme Administrative Court, is directly applicable), the protection of forests is enacted without any time-limit and is not obstructed by any illegal destruction or deforestation. Moreover, the declaration of an area as reafforestable and the prohibition of any use that would obstruct reforestation are not left to the discretion of the Administration but are mandatory.

B. Law no. 998/1979 relating to the protection of forests and forest expanses

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

Section 10 § 3

"A Committee for the Settlement of Forest Disputes is established at the seat of each prefecture, which is competent to settle disputes concerning the character of an area or part of the surface as forest area or the limits of it."

Section 14

"1. If no forest registry has been drawn up, the characterisation of an area or part of the surface as forest area and the determination of the limits thereof ... is made at the request of any person having a lawful interest or ex officio, by act of the competent forest inspector.

2. ...The act is notified to the person, legal entity or public service which has submitted the request....

Section 38 § 1

"Forests and forest areas which are destroyed or deforested by fire or illegal logging are declared reafforestable, regardless of their special category or their location ..."

Section 41

"1. The decision declaring an area as reafforestable is taken by the competent prefect. It clearly indicates the limits of the area and is accompanied by a plan ...

3. ... the decision of the prefect mentioned in paragraph 1 is taken following the recommendation of the competent forest inspection."

19. According to Section 43 of that Law the State can buy the properties included in a reforestation scheme.

20. The Government stress that the above-mentioned sections establish a special judicial procedure for the characterisation of an area as forest area and aim at settling disputes in a binding way for both the Administration and the individuals.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No 1

21. 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."

A. The submissions of the parties

1. The applicants

22. The applicants affirmed that they were the owners of the contested properties and that they had submitted to the Court the deeds on which they based their claims. They complained that the State tried to take away their property without any reason of public interest and without paying any compensation. The Government's argument that the disputed area constituted a forest in the past was just a pretext and could not justify the taking of their property or the control of its use. Further, the failure to compensate them amounted to a disproportionate interference with their property rights. In that connection, the applicants stressed that according to Law no. 998/1979, the State could buy the properties included in a reforestation scheme. The applicants had submitted a request to have their properties purchased to which the competent authorities had not replied; thus, the refusal of the State to pay them any compensation had been confirmed.

23. The applicants further argued that they had submitted a great number of judicial decisions whereby the Greek courts decided the property status of the Veïkou Estate. It transpired from these decisions that the courts had recognised that a number of plots which were situated in the greater area of the Veïkou Estate did not constitute a forest but were private properties which were included in the development plan of the city. Some other judicial decisions submitted by the applicants had concluded that the greater area which comprised their properties had never been a forest in the past.

24. The applicants stressed that the administrative authorities which decided the reforestation referred to the area as a public domain and totally ignored the judicial decisions which were favourable to them. The applicants further claimed that the disputed area could not constitute a forest because of the nature and the composition of the soil and the subsoil. Such a conclusion could be drawn from several technical reports and expert valuations carried out in 1993, 1995, 1996, 1997 and 2000 by foresters and even University professors and experts in geology and forestry. Furthermore, some administrative decisions (forest map of the Ministry of Agriculture, Presidential decree of 28 August 1980 fixing building conditions in the area, Presidential Decree of 11 November 1991 approving the development plan of the Galatsi area, opinion of the Forest Inspection of Athens of 14 November 1968) supported the position that the disputed land had always been considered as grazing or arable land. Moreover, in 1957 the Administration delimited the forest land in the area without including in it the disputed plots.

25. The applicants lastly stressed that the present case was similar to the *Papastavrou* case, in which the Court had found a violation of Article 1 of Protocol No. 1 (*Papastavrou and Others v. Greece*, no. 46372/99, 10 April

2003). They invited the Court to follow the same approach in the instant case.

2. The Government

26. 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 subject to interference. The Government considered that the State was the owner of the broader area of the Veïkou Estate and that only the Greek courts were competent to resolve the ownership status of the disputed plots.

27. According to the Government, the mere allegation of the applicants that they were owners of these plots, which were not precisely delineated in their application, did not mean that they were actually owners. The applicants, in an attempt to prove their ownership rights on the disputed land, relied on judicial decisions and administrative documents which concerned other properties (both for the ownership status and the character as a forest) and tried to use the European Court of Human Rights as a civil court which could resolve the ownership status of their plots. However, no decision had been taken by the domestic courts as regards the ownership status of the applicants' plots. The Supreme Administrative Court only examined whether the conditions for declaring the area reafforestable were met, in particular whether the prefect's decision was lawful and sufficiently justified in relation to Article 117 § 3 of the Constitution and other provisions of Law no. 998/1979. The determination of the ownership status of the whole Veïkou Estate was still pending before the domestic courts, following several actions (on the basis of Article 70 of the Code of Civil Procedure) introduced by persons claiming ownership rights on certain plots. However, the applicants had never introduced such an action.

28. The Government further argued that neither the judgment of the Supreme Administrative Court nor the prefect's decision violated the applicants' rights under Article 1 of Protocol No. 1. According to Article 117 of the Constitution, the protection of forests was guaranteed without any time-limit in the past and could not be obstructed by any act of destruction and deforestation accomplished illegally. A decision to reforest was not left to the discretion of the Administration but had to be taken when necessary and when the conditions provided for in Article 117 were met. The Supreme Administrative Court had found, on the basis of a great amount of evidence, that it was probable that the disputed area constituted 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.

29. 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.

B. The Court's assessment

30. The Court reiterates that Article 1 of Protocol No. 1, which guarantees in substance the right of property, comprises three distinct rules (*James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37). The first, which is expressed 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, 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.

31. As regards the question whether there is a "possession" within the meaning of Article 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.*

32. For the purposes of the proceedings before the Court, the applicants could 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 to the Convention (*Papastavrou and Others*, cited above, § 35).

33. 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 are not left to the discretion of the authorities but are 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.

34. The Court notes that the prefect's decision of 6 September 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 operative, 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 (*Papastavrou and Others*, cited above, § 37).

35. 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.

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

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

36. According to the applicants, the length of the proceedings constituted a breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

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

37. The Government referred to the backlog of cases before the Supreme Administrative Court and affirmed that the length of the proceedings was not open to criticism.

A. Period to be taken into consideration

38. The Court notes that the proceedings before the Supreme Administrative Court started on 10 November 1994 and ended on 5 June 2000. They have therefore lasted five years, six months and twenty-five days for one level of jurisdiction.

B. Reasonableness of the length of the proceedings

39. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicants and of the relevant authorities, and the importance of what was at stake for the applicants in the litigation (see, for example, *Comingersoll v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV).

40. The Court considers that even though the case in question was difficult to determine it cannot be said that this in itself justified the overall length of the proceedings. In this respect, the Court notes in particular that the Supreme Administrative Court did not examine the merits of the case, which would have been a particularly complex task, but declared the applicants' appeal inadmissible on the ground that the impugned act was not an operative one. The Court further observes that the applicants could not be deemed responsible for the delays encountered in the handling of their case. It points out that the Supreme Administrative Court gave judgment more than five and a half years after the case was brought before it and that the Government did not supply any convincing explanation for this delay, which seems manifestly excessive. In that connection, the Court recalls that, according to its constant case-law, a chronic backlog of cases in a court's list is not a valid explanation (*Boca v. Belgium*, no. 50615/99, § 24, ECHR 2002-IX).

41. 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* [GC], no. 30979/96, § 45, ECHR 2000-VII).

42. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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."

44. The applicants claimed under the head of pecuniary damage 3,396,010 euros (EUR). This amount was based on an expert valuation carried out in June 2003 by two civil engineers appointed by the applicants to assess the value of all the disputed plots.

45. Under the head of non-pecuniary damage, the applicants argued 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. However, they affirmed that a judgment of the Court holding that there has been a violation of their rights under the Convention would constitute sufficient just satisfaction and claimed token compensation of one euro.

46. The applicants claimed, lastly, EUR 18,684 for costs and expenses before the domestic courts, EUR 59,000 for costs and expenses before the Court and EUR 1,416 for the fees of the civil engineers who had assessed the value of their properties.

47. The Government submitted that if the Court were to find a breach of the applicants' rights under the Convention, it would be necessary to give the parties an opportunity to make further observations on the issue of just satisfaction.

48. The Court considers that the question of the application of Article 41 is not ready for decision. Accordingly, it reserves that question and in determining the further procedure will have regard to the possibility of agreement between the Government and the applicants (Rule 75 §§ 1 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that the question of the application of Article 41 is not ready for decision; accordingly,
   (a) *reserves* the said question in whole;

(b) *invites* the Government and the applicants to submit, within six months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 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 8 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Peer LORENZEN
President

List of applicants

1. Tryphon KATSOULIS
2. Aphroditi KOUTSOUGERA
3. Leonidas VOUDOURIS
4. Philippos DAOUSANIS
5. Maria DAOUSANI
6. Konstantinos PIERROS (the applicant died on 18 July 2002; the proceedings are continued by his heirs, namely his son, Nikolaos Pierros, and his daughter, Georgia Pierrou)
7. Irini TSOKA
8. Konstantinos TSOKAS
9. Leonidas ZIMIANITIS
10. Stavroula TZATHA
11. Spyridoula TZATHA
12. Evgenia CHALKIA
13. Eleni KOTSIA
14. Vassilios DOGANIS
15. Asimakis DOGANIS
16. Eleftheria PAPADOPOULOU
17. Georgia POLENTA
18. Panagiota BALANTINOU
19. Maria PERVOLARAKI
20. Sophia PYRGIANOU
21. Georgia TOURASOGLOU (the applicant died on 6 June 2002; the proceedings are continued by her brother and heir, Michail Tourasoglou)
22. Kyriakos FRILIGGOS
23. Triantafyllia FRILLIGOU
24. Ioannis KAKAVAS
25. Aggeliki KOUTSOGIANNI
26. Konstantinos PAPADIMITRIOU
27. Eleni TSILIGIANNI
28. Evaggelos PAPAMAVROUDIS
29. Maria GIAKOUMAKI
30. Eleni KARRA
31. Païkos KARRAS
32. Anna KARMOGIANNI
33. Alexandra THOMA
34. Aikaterini THOMA
35. Panagiota VLAMI
36. Christos ZERVAS
37. Maria ZERVA
38. Nikolaos MARALETOS
39. Eleni NIKOLI