



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

FIRST SECTION

CASE OF KAKAMOUKAS AND OTHERS v. GREECE

(Application no. 38311/02)

JUDGMENT

STRASBOURG

22 June 2006

**THIS CASE WAS REFERRED TO THE GRAND CHAMBER,
WHICH DELIVERED ITS JUDGMENT ON
15 February 2008**

In the case of Kakamoukas and Others v. Greece,

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

Mr L. LOUCAIDES, *President*,

Mr C.L. ROZAKIS,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 1 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 38311/02) against the Greek Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by fifty-eight Greek nationals (“the applicants”), listed in the Appendix, on 17 October 2002.

2. The applicants were represented by Mr D. Nikopoulos and Mr K. Gyiokas, of the Salonika Bar. The Greek Government (“the Government”) were represented by their Agent's delegates, Mr V. Kyriazopoulos, Adviser, Legal Council of State, and Mr I. Bakopoulos, Legal Assistant, Legal Council of State.

3. The applicants complained, in particular, under Article 6 § 1 of the Convention, about the length of two sets of proceedings 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. On 25 March 2004 the Chamber decided to communicate part of the application to the Government and declared the remainder of the application inadmissible.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

7. By a decision of 24 March 2005, the Court declared the remaining complaints partly admissible.

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

THE FACTS

I. THE CIRCUMSTANCES BEHIND THE DISPUTE

A. The background to the case

1. The period 1925-1936

9. On 7 April 1925 the Greek State expropriated an area of land measuring 534,892 m², located on the outskirts of the town of Salonika (Mikra district), for the purpose of building an airport. This area, which now falls within the jurisdiction of Kalamaria Town Council, included plots of land which belonged to the applicants' ascendants.

10. The amount of expropriation allowance was set by judgments nos. 1321/1926 and 703/1929 of the Salonika Court of First Instance, no. 9/1930 of the Salonika Appeal Court and no. 116/1931 of the Court of Cassation.

11. By judgment no. 293/1936 of the President of the Salonika Court of First Instance, the applicants' ascendants were recognised as being entitled to the compensation in question. However, the State refused to pay it. The airport was ultimately constructed elsewhere.

2. The period 1967-1972

12. On 22 June 1967, by a joint decision of the Minister of Finance and the Minister of Public Works (no. E.17963/8019), the State went ahead with expropriation of the above-mentioned area, which included the disputed plots of land, with a view to building housing for workers. As the decision did not fulfil a public-interest aim, however, it was revoked on 6 July 1972.

3. The period 1972-1988

13. On 29 June 1972 a royal decree designated the land for the construction of a sports centre.

14. On 14 May 1987 the Salonika prefect modified the development plan (ρυμοτομικό σχέδιο) for the area, which he designated as a "green area" and "sports and leisure zone". This decision was confirmed by a decision of the Minister of the Environment and Public Works dated 31 July 1987 and by a presidential decree of 22 August 1988.

B. The proceedings to amend the 1987 development plan

15. On 28 June 1994 the applicants or their ascendants applied to the Salonika Prefecture requesting that the development plan in force be amended to have the encumbrance affecting their land removed. The prefecture did not reply.

16. On 20 November 1994 the applicants or their ascendants applied to the Supreme Administrative Court, seeking to have set aside the authorities' implicit refusal to remove the encumbrance affecting their land.

17. On 11 January 1996 the Kalamaria Town Council filed its observations on the case. A hearing was held on 26 March 1997.

18. On 20 October 1997 the Supreme Administrative Court granted the applicants' request. In particular, it found that, having failed for a long time to proceed with the expropriation of the land in question in furtherance of the project provided for in the development plan, the authorities were duty bound to lift the encumbrance on the disputed properties. The Supreme Administrative Court sent the case back to the authorities, asking them to take the necessary measures to make available the applicants' land (judgments nos. 4445/1997, 4447/1997 and 4448/1997). Those judgments were finalised and certified as authentic on 25 February 1998.

II. THE CIRCUMSTANCES FORMING THE SUBJECT-MATTER OF THE DISPUTE

A. The proceedings brought by Kalamaria Town Council against the Supreme Administrative Court's judgments nos. 4445/1997, 4447/1997 and 4448/1997

19. On 30 September 1998 Kalamaria Town Council lodged a third-party appeal (τριτανακοπή) against the above-mentioned judgments by the Supreme Administrative Court. This form of appeal, open to persons who have been neither parties to nor represented in proceedings, enables them to contest a decision which adversely affects them. Where the third-party appeal – which does not have suspensive effect – is found to be valid, the impugned judgments are set aside retrospectively and the application to the administrative court is re-examined. In the instant case, as the third-party appeal did not have suspensive effect, judgments nos. 4445/1997, 4447/1997 and 4448/1997 thus remained immediately enforceable.

20. On 28 November 2001 the Supreme Administrative Court declared the third-party appeal inadmissible (judgments nos. 4148/2001, 4149/2001 and 4150/2001). It held that Kalamaria Town Council could not rely on this form of appeal since it had already had an opportunity to submit its

observations on the case. The above-mentioned judgments were finalised and certified as authentic on 17 April 2002.

B. The new urban development plan and the proceedings to have it set aside

21. On 13 May 1999 the Minister for the Environment and Public Works modified the urban development plan of Kalamaria municipality in order to designate the land in question as the site for a sports and leisure centre (decision no. 12122/2761).

22. On 9 September 1999 the applicants or their ascendants applied to the Supreme Administrative Court seeking to have the above-mentioned decision set aside. On 11 September 2002 they submitted various documents in support of their application, including the title deeds to the properties. The hearing, initially scheduled for 8 November 2000, was postponed several occasions times. It was finally held on 29 October 2003. The Supreme Administrative Court has not yet delivered its judgment.

THE LAW

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

23. Applicants nos. 1-9, 12-19, 23, 26-31, 33-40, 42-44, 46-49 and 58 complained about the time taken to examine the third-party appeal lodged with the Supreme Administrative Court by Kalamaria Town Council. In addition, all of the applicants complained about the length of the administrative proceedings to set aside the new urban development plan. They relied on 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...”

A. Periods to be taken into consideration

1. Third-party appeal lodged with the Supreme Administrative Court by Kalamaria Town Council

24. The period to be considered began on 30 September 1998, when the Kalamaria Town Council applied to the Supreme Administrative Court, and ended on 28 November 2001, when judgments nos. 4148/2001, 4149/2001

and 4150/2001 were delivered. It therefore lasted three years, one month and twenty-nine days at one level of jurisdiction.

2. Proceedings to have the new urban development plan set aside

25. The Government claimed that, for as long as the applicants had not submitted the necessary supporting documents, especially the title deeds, in support of their application, the Supreme Administrative Court could not examine the case. If the Supreme Administrative Court had nevertheless held a hearing, it would have been obliged to declare the application inadmissible. Accordingly, the Government considered that the period before 11 September 2002, when the applicants filed the documents in question, could not be taken into consideration.

26. The applicants claimed that the hearing before the Supreme Administrative Court had been postponed on each occasion of the court's own motion; they also argued that it had not been necessary to submit the supporting documents in question, since their argument had been based on previous judgments delivered in their case by the same court, particularly judgments nos. 4445/1997, 4447/1997 and 4448/1997.

27. The Court considers that there is nothing in domestic law or practice to support the argument put forward by the Government and that it cannot therefore be used to alter the starting point of the disputed proceedings. These began on 9 September 1999, with the application to the Supreme Administrative Court, and have not yet ended. To date, they have therefore lasted more than five years and five months at a single level of jurisdiction.

B. Reasonableness of the length of the proceedings

28. The applicants submitted that the treatment of their cases had been excessively lengthy.

29. The Government made no comment on the time taken to examine the third-party appeal. As to the second set of disputed proceedings, they argued that the period which had elapsed since 11 September 2002, when the applicants submitted the documents in support of their application, was not unreasonable, having regard in particular to the complexity of the case.

30. The Court reiterates that that the "reasonableness" of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria set out in its case-law, especially the complexity of the case, the conduct of the applicants and of the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

31. The Court has examined cases raising similar issues to that in the instant case on numerous occasions and has found a violation of Article 6 § 1 of the Convention (see the above-mentioned *Frydlender* case).

32. Having examined all the evidence submitted to it, the Court considers that the Government have not advanced any fact or argument which could lead to a different conclusion in this case. Having regard to its case-law in this area, it considers that, in the instant case, the length of the impugned sets of proceedings has been excessive and has failed to fulfil the “reasonable time” requirement.

There has therefore been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicants, relying on an expert report drawn up at their request in May 2005, claimed a total amount of 10,540,343 euros (EUR) in respect of the pecuniary damage which the interference with their property had caused them to sustain. They also claimed EUR 10,000 each in respect of the non-pecuniary damage which they had sustained.

35. The Government considered that the Court should dismiss the claim for pecuniary damage. They also submitted that the finding of a violation would constitute in itself sufficient just satisfaction in respect of the alleged non-pecuniary damage.

36. The Court points out that its finding of a violation of the Convention was based exclusively on the breach of the applicants' right to have their case determined within a “reasonable time”. In those circumstances, it discerns no causal link between the breach established and any alleged pecuniary damage sustained by the applicants; this aspect of their claims must therefore be dismissed (see *Appietto v. France*, no. 56927/00, § 21, 25 February 2003).

37. On the other hand, the Court is of the view that the applicants undoubtedly suffered non-pecuniary damage on account of the breach of their right to have their case determined within a reasonable time, and that this damage is not sufficiently compensated by the finding of a violation of the Convention. Ruling on an equitable basis, as required by Article 41 of the Convention, it awards EUR 8,000 under this head to each of the applicants listed under nos. 1-9, 12-19, 23, 26-31, 33-40, 42-44, 46-49 and 58 and EUR 5,000 to each of the applicants listed under nos. 10-11, 20-22, 24-25, 32, 41, 45 and 50-57, plus any tax that may be chargeable.

B. Costs and expenses

38. The applicants claimed EUR 34,100 for the costs and expenses incurred in Greece, EUR 10,000 for the expert report and EUR 11,990 for the costs and expenses incurred before the Court. In this connection, they submitted only one document, drawn up by the civil engineer who had written the report and pricing it at EUR 10,000, not inclusive of value-added tax.

39. The Government considered that the amount claimed was excessive and that this claim should be dismissed.

40. With regard to the costs and expenses incurred in Greece, the Court has already held that the length of proceedings may lead to an increase in an applicant's costs and expenses before the domestic courts and that it should therefore be taken into account (see, among other authorities, *Capuano v. Italy*, judgment of 25 June 1987, Series A no. 119-A, p. 15, § 37). In the instant case, however, the Court notes that the applicants have not submitted any bills for the costs incurred before the courts to which they applied. This part of their claims must therefore be dismissed. With regard to the costs incurred before the Strasbourg Court, the Court observes that the applicants have provided supporting documents only in respect of the expert report which, however, was not necessary for evaluating the damage arising from the length of the proceedings. As to the remainder, the applicants' claims are neither detailed nor supported by the necessary documents. This part of their claims must also therefore be dismissed.

C. 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

1. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*, by five votes to two,
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros) to each of the applicants named under nos. 1-9, 12-19, 23, 26-31, 33-40, 42-44, 46-49 and 58 and EUR 5,000 EUR (five thousand euros) to each of the

applicants named under nos. 10-11, 20-22, 24-25, 32, 41, 45 and 50-57 in respect of non-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 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* unanimously the remainder of the claim for just satisfaction.

Done in French, and notified in writing on 22 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- partly concurring opinion of Mr Rozakis;
- partly dissenting opinion of Mr Loucaides and Mrs Vajić.

L.L.
S.N.

PARTLY CONCURRING OPINION OF JUDGE ROZAKIS

(Translation)

I voted with the majority on the issue of just satisfaction (non-pecuniary damage) in order to comply with the new case-law developed in *Arvanitaki-Roboti and Others v. Greece*, judgment of 18 May 2006, in which, along with two other judges, I expressed a dissenting opinion on this particular aspect of the case.

JOINT PARTLY DISSENTING OPINION OF JUDGES
LOUCAIDES AND VAJIĆ

We agree with the majority that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings. We cannot, however, approve of the sums awarded to the applicants in respect of non-pecuniary damage. In this regard, we reiterate the joint partly dissenting opinion of Judges Loucaides, Rozakis and Jebens, annexed to the *Arvanitaki-Roboti and Others v. Greece* judgment of 18 May 2006. We subscribe to all the arguments and conclusions set out in that text.

List of applicants

1. Georgios KAKAMOUKAS
2. Charisios KAKAMOUKAS
3. Evaggelia KAKAMOUKA
4. Maria LIOUTA
5. Styliani KAKAMOUKA
6. Vassiliki AZA
7. Stavros KAKAMOUKAS
8. Antonios KAKALIANANTIS
9. Vassiliki NYFOUDI
10. Vassiliki KOUSIOTA
11. Styliani AZA
12. Nikolaos KAKAMOUKAS
13. Panagiota KAKAMOUKA
14. Antonios KAKAMOUKAS
15. Vassilios KAKAMOUKAS
16. Christos or Christodoulos KAKAMOUKAS
17. Vassiliki VLACHOU
18. Maria TSIORLINI
19. Anastasia POUFLI ou CHATZIPOUFLI
20. Syrmo ARGYROUDI
21. Giannoula MATZIRI
22. Kyriaki PLOUSIOU
23. Ioanna PAPADOPOULOU
24. Maria MATZARLI
25. Vassiliki CHATZISTOGIANNOUDI
26. Dimitrios KYRTSOUDIS
27. Charilaos KYRTSOUDIS
28. Vassilios LATTOS
29. Panagiota PATERA
30. Anastasia LATTOU
31. Alexandros Athanassiou LATTOS
32. Evangelos LATTOS
33. Maria ARGYRIOU
34. Panagiotis LATTOS
35. Georgios LATTOS
36. Dimitrios LATTOS
37. Ioanna ou Giannoula KAKALIANANTI
38. Alexandros Georgiou LATTOS
39. Konstantinos LATTOS
40. Vassiliki CHOLIDI
41. Niki DIMOUDI
42. Paschalis LATOS-PANOUSIS

43. Stavros PANOUSIS
44. Louiza PASCHALOU DI
45. Andromachi BALOKOSTA
46. Solon KOUFAL IOTIS
47. Eleni LATTOU
48. Dimitrios LATTOS
49. Fani KARAKASI
50. Eftychia KONTOULI
51. Chrysi BABARATSA
52. Nikolaos TSOLAKIS
53. Evaggelia ZLATANOU
54. Maria MALIGGOU
55. Athanasios TSIOLAKIS
56. Maria VLACHOPOULOU
57. Fani TSITSAKI
58. Aikaterini GYIOKA