



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

FIRST SECTION

**CASE OF HOUSING ASSOCIATION OF WAR DISABLED AND
VICTIMS OF WAR OF ATTICA AND OTHERS v. GREECE**

(Application no. 35859/02)

JUDGMENT

STRASBOURG

13 July 2006

FINAL

11/12/2006

*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 Housing Association of War Disabled and Victims of War of Attica 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 E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 22 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 35859/02) 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 an association with legal personality under Greek law, the Housing Association of War Disabled and Victims of War of Attica (“the first applicant”), on 25 September 2002. The first applicant lodged the present application acting both in its own capacity and on behalf of 157 of its members, whose names have been submitted to the Court, on the basis of a decision taken by its general assembly on 8 September 2002.

2. The applicants were represented by Mr N. Alivizatos and Mrs E. Kioussopoulou, both lawyers practising in Athens. The Greek Government (“the Government”) were represented by the delegates of their Agent, Mr V. Kyriazopoulos, Adviser at the State Legal Council and Mr D. Kalogiros, Legal Assistant at the State Legal Council.

3. The applicants complained under Article 1 of Protocol No. 1 about an interference with their property rights.

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 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).

6. By a decision of 27 January 2005 the Court declared the application admissible.

7. The applicants, but not the Government, filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The first applicant was set up in 1951 by disabled Second World War veterans and relatives of soldiers who died in that war with the aim of providing housing to its members. It raised its capital by means of members' contributions.

9. In 1957, by deed no. 4572, the first applicant bought 50,000 sq. m in the area of Aghios Ioannis in Cholargos, for a total of 400,000 drachmas. The Government claimed that the land did not belong to the persons who had sold it to the applicants but to the State. They relied in this connection on a judgment issued in 1968 by the Athens Court of Appeal. The applicants contested this view. They stressed that the 1968 judgment had been delivered after the exchange of their land in 1964 (see paragraph 10 below), namely after they had transferred to the State all their possible claims against the former owners of their land, and that in any event they had purchased this land in good faith and at market value.

10. In 1960 the land was requisitioned without compensation for the needs of the Greek Army. After an application by the association, the Supreme Administrative Court ruled that the requisition was null and void because it was serving permanent and not temporary needs (judgment no. 143/1963). In 1964, as a result of this judgment, the State bought the unlawfully requisitioned land and exchanged it with 100,000 sq. m of land owned by the National Defence Fund in the nearby area of Korakovouni. The area was public woodland outside the boundaries of the urban development plan. According to the applicants, the understanding was that the association would be allowed to develop it after the State had issued the appropriate changes to the local planning regulations. The first applicant paid one drachma per sq. m to cover the difference in value between the old and the new land. The relevant decision approving the contract of sale and exchange was retroactively validated by virtue of the Necessity Act (Law no. 62/1967). The Government asserted that the above price was symbolic and that at the relevant time the market value of the land was 15 drachmas per sq. m. Therefore, they considered that the land in question had been donated to the applicants. The applicants contended that this assertion was false.

11. On 6 May 1966 a Royal Decree included the land in the revised urban development plan, following a proposal by the Cholargos District Council and an affirmative opinion by the Supreme Administrative Court sitting in an administrative capacity with the power to give a non-binding advisory opinion.

12. In 1974 Legislative Decree no. 303/1974 declassified the land from being reafforestable (άρση αναδάσωσης). Further, the Minister of Agriculture issued a license for building roads and cutting down trees in order to implement the new town plan. In 1975 the applicant association started transferring plots of land to its members and applied to the Cholargos District Council for an altitude study, which was necessary under Greek law for the implementation of the urban development plan. The first building licenses were also issued.

13. In 1975 the new Constitution introduced new rules for the protection of the environment (see paragraph 22 below).

14. In 1976 the Cholargos District Council rejected the association's application for an altitude study. Further, the Minister of Agriculture requested that the Minister of Public Works revoke the 1966 Royal Decree whereby the planning zone had been extended to the land owned by the first applicant, for the reason that it had been issued without the assent of the Ministry of Agriculture even though the area "was a forest". In 1978 the Minister of Public Works replied that he would not revoke the decree because it had already been applied for twelve years and had been relied upon by third parties (decision no. Γ21046/3102/7.7.1978). He then issued a new decision approving the detailed zoning plan (ρυμοτομικό σχέδιο) and the altitude study. On an application by the Cholargos District Council, the Supreme Administrative Court found both decisions illegal. It held in particular that under the 1975 Constitution the protection of the forest was more important than the expectations created by the fact that the land had already been in the process of being developed (judgment no. 2330/1980).

15. On 8 November 1980 the Minister of Planning, Housing and the Environment gave a new decision which repeated in substance the annulled decision concerning the detailed zoning plan and the altitude study. The Cholargos District Council again applied to the Supreme Administrative Court, which quashed the new decision as well, considering that following its earlier ruling the administration had to revoke the zoning decree or give new reasons for not doing so (judgment no. 362/1982). A third-party appeal (τρίτανακοπή) by the first applicant was dismissed by the Supreme Administrative Court (judgment no. 2920/1985).

16. On 15 April 1988 a Presidential Decree abolished the 1966 Royal Decree in so far as it extended the urban development plan to the association's land. Members of the association brought their case unsuccessfully before the Supreme Administrative Court which on 26 April 1990 ruled that, even if the Necessity Act (Law no. 62/1967) had ratified the

inclusion of a forest in a zoning area, such law would have been considered to have been abrogated by virtue of the 1975 Constitution (judgment no. 1403/1990).

17. From 1990 to 1999 the first applicant undertook various initiatives which aimed at a settlement of its dispute with the State but to no avail.

18. In 1999 the Forest Inspectorate of Penteli issued a decision declaring that the first applicant's land was a forest according to the Forests Code.

19. On 17 March 1999 the applicant association and three of its members invited the State to exchange the association's land for new land of equal value belonging to the State, or to expropriate it, according to the provisions of Law no. 998/1979 (see paragraph 23 below). The authorities did not reply.

20. On 22 July 1999 the case was brought before the Supreme Administrative Court. The applicants referred to the history of the proceedings and *inter alia* argued that their property had been interfered with for more than forty years with no compensation whatsoever. Coming to the current situation, they stressed that Presidential Decree of 15 April 1988, and the interpretation of Articles 24 § 1 and 117 § 4 of the 1975 Constitution as set out in the 1403/1990 judgment and in the jurisprudence of the Supreme Administrative Court, made clear that it was no longer possible to build on their land. Such interference was even more odious in view of the aims of the association which was the provision of appropriate housing for its members, an aim that had now come to nought, despite the great amounts of money and time invested in it by the association and its members. The applicants claimed that according to the provisions of Law no. 998/1979 they were entitled to compensation for the deprivation of their right to use their property for the purposes for which they had bought it. Thus, by refusing to exchange their land for new land of equal value, or to expropriate it, the State had violated Articles 17 of the 1975 Constitution and 1 of Protocol No. 1 to the Convention.

21. On 4 October 2001 the Supreme Administrative Court, by a majority, dismissed the application on the ground that the relevant provisions of Law no. 998/1979 were unconstitutional. In particular, it held that, "by providing for the possibility of expropriating or exchanging woodland which cannot become a residential area, Section 50 § 3 presupposes that the urban development of woodland is in principle lawful, something which is contrary to Article 24 of the 1975 Constitution". However, one judge expressed the opinion that the expropriation or the exchange of land which was purchased before the entry into force of the 1975 Constitution was not contrary to it (judgment no. 3403/2001). The judgment was certified (θεώρηση) on 23 March 2002.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

22. The relevant provisions of the Constitution, which came into force on 11 June 1975, read as follows:

Article 17

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

2. No one shall be deprived of his property except in the public interest, which must be duly shown, when and as specified by law and always following 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 a request for the final determination of compensation is made, the value at the time of the court hearing of the request shall be considered...”

Article 24 § 1

“The protection of the natural and cultural environment is an obligation of the State. The State is bound to take special preventive or repressive measures for the preservation of the environment. Matters pertaining to the protection of forests and woodland in general shall be regulated by law. It is forbidden to alter the status and use of State forests and woodland, except where agricultural development or other use is paramount for the national economy and serves the public interest.”

Article 117 § 4

“The expropriation of forests or woodland that belong to private individuals or corporations is allowed only for the benefit of the State, according to Article 17 of the Constitution [which provides the conditions for the taking of property], for the public interest; their status as forests or woodlands is not thereby changed.”

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

23. The relevant section of Law no. 998/1979 reads as follows:

Section 50 (3)

“Forests and private woodland belonging to Housing Associations at the time of entry into force of this law and which cannot lawfully become a residential area or be included in such an area according to [§§ 1 and 2 of this Section], shall be expropriated by the State at the expense of the Central Fund of Agriculture and Forests, or shall be exchanged with land of equal value or other vacant land which is

under the management of the Ministry of Agriculture and has been included in a residential area according to current legislation. The expropriation shall take place by virtue of a joint decision of the Ministers of Finance and Agriculture, on the basis of an opinion by the Forestry Technical Council...”

In 1987 the Supreme Administrative Court held that “in its true meaning [Section 50 of Law no. 998/1979] regulated the status of private forests and woodland purchased by housing associations”; it thus considered that the above provision was not applicable in a case where land was donated to a housing association (judgment no. 4884/1987).

THE LAW

I. THE GOVERNMENT’S PRELIMINARY OBJECTION

24. The Court observes that, in its decision on the admissibility of the application, it joined to the merits the Government’s objection that the application was lodged out of time.

25. In particular, the Government argued that the six-month period ran from judgment no. 1403/1990, by which the Supreme Administrative Court had ruled that, even if the Necessity Act (Law no. 62/1967) had ratified the inclusion of a forest to a zoning area, such law would have been considered abrogated by virtue of the 1975 Constitution. Since that judgment, the applicants had had no hope that they could ever build on their land. This was all the more so as since 1987 the Supreme Administrative Court had already held that in the event of concession of woodland by the State, the provisions of Section 50 of Law no. 998/1979 were not applicable (judgment no. 4884/1987 – see paragraph 23 above). The Government therefore considered that the applicants had applied in 1999 to the Supreme Administrative Court only to circumvent the six-month time-limit.

26. The applicants submitted in reply that the scope of their application to the Supreme Administrative Court, which had resulted in the 1403/1990 judgment, had nothing to do with the scope of their application before the same court which was concluded with judgment no. 3403/2001. In 1990 they had unsuccessfully requested the reinstatement of the 1966 inclusion of their land in the urban development plan for Cholargos, in order to be able to build their homes on it, whereas in 1999 they had tried to alienate themselves from the same land in order to obtain some sort of compensation for the impossibility to build on it caused by the Presidential Decree of 15 April 1988 and the interpretation of the relevant provisions of the 1975 Constitution as set out in the 1403/1990 judgment and in the jurisprudence of the Supreme Administrative Court. Thus, they had invited the State to exchange it for new land of equal value belonging to the State, or to expropriate it pursuant to Section 50 of Law no. 998/1979 which was the

only possibility open to them. But to no avail. They further argued that the Government's reference to judgment no. 4884/1987 was misleading, because in that judgment the Supreme Administrative Court had not held that the relevant provisions of Law no. 998/1979 were unconstitutional; it had merely held that these provisions did not apply to cases in which the land in question was donated by the State to housing associations, whereas they did apply to cases where such lands were purchased by housing associations. Given that the applicants had purchased their land, the precedent of the 1987 judgment of the Supreme Administrative Court was irrelevant to the present proceedings.

27. The Court observes that, following the enactment of the new Constitution, as subsequently interpreted by the Supreme Administrative Court, the applicants found themselves in a state of uncertainty as to the future of their property and unsuccessfully made various attempts to obtain redress: in 1990 they tried to obtain permission to build on their land. From 1990 to 1999 they tried to settle their dispute with the State and, finally, in 1999 they invited the State either to exchange their land for new land of equal value, or to expropriate it pursuant to Law no. 998/1979.

28. The Court accepts that the Supreme Administrative Court's judgment of 26 April 1990 put an end to the applicants' possibilities of using their land for building purposes. However, the applicants cannot be blamed for having tried, after their unsuccessful challenge to the Presidential Decree of 15 April 1988 (see paragraph 16 above), to obtain at least some compensation via the expropriation or the exchange of their land. This possibility was offered to them by virtue of Law no. 998/1979 (see paragraph 23 above), the constitutionality of which had not been questioned at the time when the applicants attempted that remedy; it cannot therefore be argued that when the applicants applied to the Supreme Administrative Court in 1999, they had reasons to believe that their recourse to that remedy would be of no avail (see, by contrast, *Astikos Oikodomikos Synetairismos Nea Kostantinoupolis v. Greece* (dec.), n° 37806/02, 20 January 2005). The Government's argument that judgment no. 4884/1987 should have indicated to the applicants that their application to the Supreme Administrative Court was bound to fail does not convince the Court either. It does not find it established that this case-law would leave the applicants' case without success.

29. The Court has not overlooked the fact that the applicants waited for almost nine years before inviting the State to exchange their land for new land of equal value or to expropriate it and considers that this delay is subject to criticism. However, it has taken note of the applicants' assertion that, during this period, they had not remained inactive but had unsuccessfully undertaken various initiatives aimed at settling their dispute with the State (see paragraph 17 above). This assertion, which is not questioned by the Government, and the fact that the applicants' land was

formally declared to be a forest only in 1999 (see paragraph 18 above), constitute a sufficient explanation for the delay by the applicants in bringing their application on the basis of Law no. 998/1979. Finally, the Court notes that the outcome of the proceedings under Law no. 998/1979 would be of crucial importance for the applicants' decision as to whether or not to bring an application before the Court, as it affected the question of proportionality of the interference with their property.

30. In the light of the above, the Court does not agree with the Government's argument that the application should have been lodged within six months from the date of the delivery of judgment no. 1403/1990 of the Supreme Administrative Court; the preliminary objection in question must accordingly be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

31. 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."

32. This provision contains three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated 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, must be construed in the light of the general principle laid down in the first rule (see *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II, and *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 44, ECHR 1999-V).

A. The parties' submissions

33. The applicants stressed that in 1964 at the time when the land in question was obtained by them, forests and woodland did not enjoy a legal status comparable with the special status which they enjoy after the

enactment of the 1975 Constitution, as systematically interpreted by the courts from 1980 onwards. Thus, they had every reason to believe that they could build their homes on the land in question. This was all the more so as in 1966 the Royal Decree of 6 May had included the land in the revised urban development plan and in 1974 Legislative Decree no. 303/1974 had declassified the land from being reafforestable. Hence, when the new Constitution entered into force, their land was already a residential area in the process of being developed. However, the State had unlawfully reversed their rights without paying them any compensation and without even granting their request to exchange their land for new land of equal value or to expropriate it. Moreover, their funds diverted to their housing projects were now lost, since the value of land in this particular part of Athens, if one could not secure planning permission for building purposes, was close to zero. The applicants asserted that the interference with their property rights had not taken place by means of any law and had not respected the fair balance which should be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

34. The Government argued that there had been no interference with the applicants' property rights in the present case. They claimed that from the outset the applicants had been aware that they could not build on the land in question, because that land had long before been classified as land "to be reforested". In that connection, the Government stressed that the protection of forests was 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 were not left to the discretion of the authorities but was mandatory and the Supreme Administrative Court had scrupulously enforced these principles in order to safeguard the country's forestry resources. Even if there had been an interference with the applicants' property rights, the Government argued that such interference would amount to control of the use of property and would not disclose any breach of Article 1 of Protocol No. 1.

B. The Court's assessment

35. The Court notes that it is not its task to settle the issue of the original ownership of the disputed land, that is to decide whether the land purchased in 1957 belonged to the persons who sold it to the applicants or to the State (see paragraph 9 above). It is common ground that throughout the domestic procedure, the applicants were regarded as the owners of the land in question, which they obtained in 1964. This suffices for the purposes of the proceedings before the Court.

36. The Court is unable to accept the Government's submission that there has been no interference with the applicants' property rights within the meaning of Article 1 of Protocol No. 1 to the Convention. In this respect, the Court recalls that in 1966 the land was included in the urban development plan; in 1974 it was declassified from being reafforestable, the Minister of Agriculture issued a licence for building roads and cutting down trees in order to implement the new town plan and the first building licenses were issued (see paragraphs 11 and 12 above). The subsequent developments, i.e. the 1975 Constitution, the Presidential Decree of 15 April 1988 and the Supreme Administrative Court's judgment of 1990, which placed a prohibition on building houses on the land belonging to the applicants, in the Court's view clearly amounted to a control of the use of their property, within the meaning of the second paragraph of Article 1 of Protocol No. 1. Following the completion of the proceedings which were instituted in 1999 and which were crucial for the assessment of the proportionality of the above measure, the Court must, therefore, examine whether the interference complained of can be justified under that provision.

37. The Court considers that, in an area as complex and difficult as that of spatial development, the Contracting States should enjoy a wide margin of appreciation in order to implement their town- and country-planning policy (see *Elia S.r.l. v. Italy*, no. 37710/97, §§ 77, ECHR 2001-IX). Nevertheless, the Court cannot fail to exercise its power of review and must determine whether the requisite balance was maintained in a manner consonant with the applicants' right of property (see *Saliba v. Malta*, no. 4251/02, § 45, 8 November 2005).

38. In the present case, the principal thrust of the Government's arguments is that the protection of forests is guaranteed without limitation in time and notwithstanding illegal destruction or deforestation. However, the Court considers that in such a complex situation in which any decision could weigh heavily on the property rights of a large number of people, the legitimate concern to protect the forests, understandable as it is in the modern day, should not absolve the State of its responsibility to provide adequate protection to people such as the applicants who *bona fide* possess or own property (see, *mutatis mutandis*, *Papastavrou and Others v. Greece*, n° 46372/99, § 37, ECHR 2003-IV).

39. The Court is particularly struck by the fact that, although the very substance of the applicants' ownership has been affected (see *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 23, § 60), the applicants were not successful in obtaining compensation under Greek law. This, combined with the State's ultimate refusal to expropriate the applicants' property or to exchange it for new land of equal value, aggravated considerably the adverse effects on the applicants' situation and placed a disproportionate burden on them.

40. The above circumstances lead the Court to conclude that there was no reasonable balance struck between the public interest and the requirements of the protection of the applicants' rights.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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."

43. The applicants asked the Court to apply in the present case the principles laid down in the case of *Papamichalopoulos and Others v. Greece* ((Article 50), judgment of 31 October 1995, Series A no. 330-B) and to invite the Government either to restore their right to build their homes on the land in question, or to pay them compensation amounting to 60-65 million euros (EUR). This sum corresponded to the market value of their land. The applicants further claimed EUR 14,700,000 for non-pecuniary damage and EUR 100,000 for costs and expenses.

44. The Government replied that the criterion used by the applicants in order to assess their pecuniary damage was "erroneous and irrelevant", because there was no market or objective value for woodlands and reafforestable lands. They considered that the pecuniary damage allegedly sustained should be equivalent to the price which the applicants had paid at the time of the transfer of their land, legally readjusted. The Government further argued that any award for non-pecuniary damage should not exceed EUR 1,000 for each applicant. Finally they contended that it would be reasonable to award each applicant EUR 500 euros for costs and expenses.

45. The Court considers that the question of the application of Article 41 is not ready for decision. Accordingly, it should be reserved and the subsequent procedure fixed having regard to any agreement which might be reached between the Government and the applicants (Rule 75 § 1 of the Rules of Court).

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* 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 three months from the date on which the judgment becomes final in accordance with 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 13 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President