



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
(Just satisfaction)

STRASBOURG

27 September 2007

FINAL

31/03/2008

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 6 September 2007,

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. In a judgment delivered on 13 July 2006 (“the principal judgment”), the Court held unanimously that there had been a violation of Article 1 of Protocol No. 1. More specifically, it held that no reasonable balance had been struck between the public interest and the requirements of the protection of the applicants' rights (see *Housing Association of War Disabled and Victims of War of Attica and Others v. Greece*, no. 35859/02, §§ 40-41, 13 July 2006).

3. Under Article 41 of the Convention the applicants invited the State either to restore their right to build their homes on the land in question, or to pay them compensation of between 60 and 65 million euros (EUR). They further claimed EUR 14,700,000 for non-pecuniary damage and EUR 100,000 for costs and expenses.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicants to submit, within three months from the date on which the principal judgment became final, their written observations on

that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 45, and point 3 of the operative provisions).

5. The applicants and the Government each filed observations and subsequently replied to each other's submissions.

THE LAW

6. 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. Pecuniary damage

1. *The applicants' submissions*

7. The applicants recalled at the outset that the Court had already accepted that not only the applicant association itself, but also each of its members, were victims of a violation of their property rights. Moreover, in 1999, when the applicant association (together with three of its board members) had sought either the exchange or the expropriation of the land in question, it had been acting in the name of and on behalf of all its members. All the applicants therefore had a right to just satisfaction.

8. The applicants stressed that their case was exceptional in many respects. The victim of the violation was not an ordinary owner or possessor: the founding of the Housing Association had been approved by the State in the early 1950s for the exclusive purpose of providing each of its members with a house. As made clear by the evidence submitted to the Court, the original land had been purchased for a substantial amount of money (GRD 400,000) paid by the applicants in 1957; it had been subsequently expropriated by the State for use by the Greek Army. In exchange, the State had transferred the land now in issue to the applicants and, since it was larger in area than the original land, the applicants had had to pay an additional amount (see paragraphs 9-10 of the principal judgment).

9. The applicants further argued that the issue of whether the land in question had been a forest before it came into their possession was irrelevant. On the contrary, what was crucial for the case was that even if that land at the time had been considered as forest – which was false – this could not hinder its use and, more specifically, its development as building land. In this respect, the applicants recalled that the drastic change in the

protection of the environment and forests in Greece had occurred gradually, after the adoption of the 1975 Constitution. Prior to that change, the protection of forests was guaranteed under ordinary legislation and could be restricted for various reasons, including the extension of town plans or for housing or agricultural use.

10. In any event, the applicants stressed that at the time it was acquired by them (1964), the land in question had not been a forest. This is all the more so in view of the fact that the land had been given to the association to replace the land the latter had bought in 1957 with its own means for exactly the same purpose, namely to provide housing to war disabled and victims of war. In other words, unlike ordinary landowners who had the legitimate expectation of building on their land and developing it subsequently, the association had owed its existence to serving the above purpose exclusively.

11. In view of the above, the applicants submitted that the violation of their rights not only fell within the ambit of the “third rule” contained in Article 1 of Protocol No. 1, but could also be considered as a deprivation of property, given that it amounted to the cessation of the purpose for which the applicant association had been founded. For this specific reason, the applicants considered that only *restitutio in integrum* could put an end to the breach that had occurred. If that was not possible, full compensation was the only acceptable reparation.

12. In this respect, the applicants submitted an expert report by *King Hellas International Property Consultants S.A.*, according to which the market value of the land in question at the date on which the violation had commenced (according to the applicants on 15 April 1988, when a Presidential decree had excluded their land from the urban development plan – see paragraph 16 of the principal judgment), had been the equivalent of EUR 14,400,000. This amount had been calculated primarily with reference to the “objective value” of their land, which represented under Greek law the minimum value on the basis of which the tax authorities had to estimate the transfer or inheritance tax owed on transactions. For information, the applicants submitted that in December 2006 the market value of their land amounted to EUR 108,000,000.

13. As no compensation whatsoever had been paid to them, the applicants submitted that the above sum should be readjusted to take account of interest rates for the period from 15 April 1988 to date. For this purpose, the experts had used two distinct alternative methods: first, they had applied the rate of interest on government bonds, the safest, albeit very conservative, type of investment in Greece, during the period in question; this method had produced an aggregate amount of EUR 132,830,000 at 31 December 2006. Second, they had applied the 6% annual interest rate corresponding to the interest rate paid by the Greek State during that period on its borrowings; this alternative method had resulted in an amount of EUR 43,570,000. At this point the applicants stressed that, using both

methods for calculation of the above sums, the experts had applied the compound interest method on a yearly basis and not on a month-to-month basis as practised by the Greek State itself in dealing with its debtors during the same period.

14. The applicants further claimed that even if the violation of their rights was considered not as a deprivation but merely as a control of the use of their property, compensation was still owed. For the calculation of that compensation, the applicants referred again to the expert report. For the period from 15 April 1988 to date, the latter had used two different methods: on the one hand, they had applied the interest rate on government bonds, producing an amount of EUR 118,430,000. On the other, the 6% annual interest rate had been applied to the same period, giving an amount of EUR 29,170,000.

15. Having said that, the applicants argued that for the calculation of the loss of use of their land, the starting point could also have been set on the date that their land had been included in the town plan of Cholargos (6 May 1966 – see paragraph 11 of the principal judgment). On that date, on the basis of the royal decree issued for the purpose, the applicants could have begun construction work on their houses after obtaining the relevant building permits. Applying the same alternative methods used above and taking into consideration the market value of their land on 6 May 1966 (EUR 1,600,000), the respective amounts would have totalled EUR 118,310,000 (investment in government bonds) and EUR 15,840,000 (6% interest rate).

2. *The Government's submissions*

16. The Government argued that in its principal judgment the Court had found that the interference complained of amounted to a control of the use of the applicants' property (*ibid.*, § 36) and not to a deprivation of property as the applicants now alleged. The fact that the objective pursued by the applicant association had not been achieved did not alter the situation.

17. The Government further noted that the Court had not contested the lawfulness of the impugned acts, the fact that the land was a forest or the public interest pursued by the acts in question. It had found a violation of Article 1 of Protocol No. 1 only because no reasonable balance had been struck between the interests of private individuals and the public interest. The Government affirmed that the present case was therefore clearly different from the *Papamichalopoulos* case, where the Court had found that the State's illegal occupation of the applicants' possessions amounted to a *de facto* expropriation (*Papamichalopoulos and Others v. Greece*, judgment of 24 June 1993, Series A no. 260-B, p. 69, §§ 41-42).

18. It was obvious, therefore, that both the applicants' request to be allowed to build on their land and their claim to compensation equal to the alleged market value of that land were totally ill-founded, since the damage

they claimed to have sustained was not causally connected with the violation found. Consequently, the applicants' claim for *restitutio in integrum* or full compensation should be dismissed.

19. Furthermore, the criterion used by the applicants in order to determine their pecuniary damage, namely the market value of the land, was wrong and inappropriate, since there was no market or “objective” value for forests and woodlands which could not be developed commercially. In this connection, the Government argued that the disputed land had always been a forest and had been earmarked for reafforestation decades previously. Consequently, the findings of the valuation report produced by the applicants, which had been prepared by a private company and was based on a totally arbitrary method of calculation, should not be taken into account by the Court.

20. According to the Government, the Court should also take into account the fact that the applicants had acquired the land by concession from the State, paying a purely symbolic price for it. Furthermore, when the State conceded the disputed land, it had not undertaken to include it in the urban development plan and had not guaranteed that the land met the requirements for being included therein.

21. Moreover, in determining the applicants' compensation for the limitation on the use of their property, the Court should take into account the pressing public-interest needs served by the applicable limitations and also the fact that not every member of the applicant association had sought, in 1999, the exchange or expropriation of the land in question by the State.

22. In view of the above, the Government concluded that any award for pecuniary damage should not exceed a total of EUR 150,000.

3. *The Court's assessment*

23. In its principal judgment the Court concluded that the interference with the applicants' property rights “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” (*ibid*, § 36). The Court cannot therefore depart from this finding and consider that the interference complained of was tantamount to deprivation of property, as the applicants now suggest. Further, the Court recalls that its present task is to determine the award of just satisfaction which, if necessary, shall be afforded to the injured party and not to go back to questions relating to the substance of the case, namely to decide whether the land in question was a forest in 1964 or whether it was donated to or purchased by the applicants.

24. The Court reiterates that, where it has found a breach of the Convention in a judgment, the respondent State is under a legal obligation to put an end to that breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the

breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI).

25. The respondent Government are, in principle, free to choose the means whereby they will comply with the judgment. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the breach allows for *restitutio in integrum*, it is for the respondent Government to effect it, the Court having neither the power nor the practical possibility of doing so itself. However, if national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, pp. 58-59, § 34, and *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I).

26. In its principal judgment the Court held, *inter alia*, 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... The Court is particularly struck by the fact that, although the very substance of the applicants' ownership has been affected..., 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. 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” (*ibid.*, §§ 38-40). It follows that the act of the Greek Government which the Court held to be contrary to the Convention was a prohibition on building houses on the land belonging to the applicants which would have been legitimate but for the failure to pay any kind of compensation.

27. The Court first considers that, in the circumstances of the case, the nature of the breach found in the principal judgment does not allow the Court to proceed on the basis of the principle of *restitutio in integrum* (see *Former King of Greece and Others v. Greece* [GC] (just satisfaction), no. 25701/94, § 73). An award of just satisfaction must therefore be made.

28. In the present case, the Court cannot overlook the fact that the applicants suffered a drastic limitation of the use of their property. Nevertheless, it is aware of the difficulties in calculating the value of the property and the pecuniary damage sustained as a result of the limitation of its use. Furthermore, it notes the considerable disparity between the parties'

estimates (see *Papastavrou and Others v. Greece* (just satisfaction), no. 46372/99, §§ 15-16, 18 November 2004).

29. In view of all the above considerations, the Court, ruling on an equitable basis as required by Article 41 of the Convention, awards the applicants EUR 5,000,000 jointly under the head of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-Pecuniary damage

30. The applicants claimed EUR 100,000 for each individual share of the applicant association, giving a total amount of EUR 15,700,000 in respect of the non-pecuniary damage they had sustained.

31. According to the Government, the amount claimed was excessive. They considered that the finding of a violation of Article 1 of Protocol No. 1 constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants.

32. The Court considers that while the applicants may have sustained non-pecuniary damage, the present judgment provides sufficient compensation for it.

C. Costs and expenses

33. The applicants sought reimbursement of EUR 100,000 for the costs and expenses incurred before the domestic courts and the Court. In this connection, they produced a bill of costs for their lawyers' fees before the Court in the amount of EUR 15,000 and a disbursement bill in the amount of EUR 24,990 charged by the experts who had prepared the valuation report.

34. The Government submitted that the amounts claimed were exorbitant, unnecessary and insufficiently substantiated. In particular, they stressed that the preparation of the expert's report had been unnecessary because it was based on the erroneous assumption that the disputed land was fit for building on and therefore had a market value. They also challenged the amount claimed for lawyer's fees, arguing that no oral hearing had been held before the Court and that the case had been examined on written submissions. Any award under this head should therefore not exceed a total amount of EUR 3,000.

35. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and were also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction), cited above, § 54).

36. The Court notes that the applicants submitted no supporting documents as regards costs and expenses before the domestic courts. Accordingly, it does not award anything under this head. As regards the

applicants' claims relating to the proceedings before it, the Court considers that the lawyers' fees and the expenses for the valuation report have been necessarily incurred, are reasonable in quantum and have been fully substantiated. Therefore, having regard to the circumstances of the case and the complexity of the question of the application of Article 41, the Court considers it reasonable to award the applicants jointly EUR 40,000, plus any tax that may be chargeable on that amount.

D. Default interest

37. 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. Holds

(a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

- (i) EUR 5,000,000 (five million euros) in respect of pecuniary damage;
- (ii) EUR 40,000 (forty thousand euros) in respect of costs and expenses;
- (iii) any tax that may be chargeable on the above amounts;

(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;

2. Dismisses the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President