CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application No. 41666/98
by Sofia KYRTATOU & Nikos KYRTATOS
against Greece

The European Court of Human Rights (Second Section), sitting on 13 September 2001 as a Chamber composed of

Mr A.B. BAKA, *President*,
Mr C.L. ROZAKIS,
Mr G. BONELLO,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 19 June 1996 and registered on 15 June 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the partial decision of 11 January 2000,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants are Greek nationals, born in 1921 and 1953 respectively and living in Munich. The first applicant is the second applicant's mother.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicants own real property in the south-eastern part of the Greek island of Tinos, where they spend part of their time. Their property includes a swamp by the coast in Ayios Yiannis. The first applicant is the co-owner of a house and a plot of land on the Ayia Kiriaki - Apokofto peninsula, which is adjacent to the swamp.

1. Proceedings before the Council of State concerning the redrawing of the boundaries of various settlements in south-east Tinos

On 4 December 1985 the prefect (νομάρχης) of Cyclades redrew the boundaries of the settlement (οικισμός) of Ayios Yiannis of the Dio Horia municipality and of the settlements of Ayia Varvara, Ayios Sostis and Lautaris of the Triandaru municipality (decision No. 9468/1985). On 6 May 1988 the prefect redrew again the boundaries of the settlements of Ayios Yiannis and Ayios Sostis (decision No. 2400/1988).

On 18 March 1993 the town-planning authority of Syros issued building permit No. 620 on the basis of the prefect's decision No. 9468/1985. Another permit (No. 298) had been issued on the same basis by the same authority in 1992.

On 21 July 1993 the applicants and the Greek Society for the Protection of the Environment and Cultural Heritage lodged an application for judicial review of the prefect's decisions Nos. 9468/1985 and 2400/1988 and of building permit No. 620/1993 before the Council of State. On the same date a second application was lodged by the same persons for judicial review of the prefect's two decisions and of building permit No. 298/1992. The basic argument of the applicants before the Council of State was that the prefect's decisions, and consequently the building permits, were illegal because in the area concerned there was a swamp and according to Article 24 of the Greek Constitution, which protects the environment, no settlement should be drawn in such a place.

On 10 July 1995 the Council of State considered that the applicants had *locus standi* because they owned property in the area concerned. The Council found that it could not review the prefect's decision No. 9468/1985 directly because the application had not been lodged within the time-limit prescribed by law. However, it could review the two building permits issued

on the basis of that decision and, in the context of this review, the Council was obliged to examine the constitutionality of the prefect's decision. This decision was found to violate Article 24 of the Constitution, which protects the environment, because the redrawing of the boundaries of the settlements put in jeopardy an important natural habitat for various protected species, the swamp in Ayios Yiannis. It followed that the building permits were also unlawful and had to be quashed. Moreover, the Council quashed the prefect's decision No. 2400/1988 because it had not been published in the Official Journal in the manner prescribed by law (decisions Nos. 3955/1995 and 3956/1955).

In 1996 the prefect issued two decisions (Nos. DP2315/1996 and DP2316/1996) which excluded the contested buildings from demolition.

On 21 April 1997 a special committee of the Council of State found that the authorities had failed to comply with the above decisions. They had not demolished the two buildings constructed on the basis of permits Nos. 620/1993 and 298/1992 and continued issuing building permits in respect of the area that had been included in the settlements further to the unlawful redrawing of the boundaries.

2. Civil proceedings against Mr M

On 31 January 1991 the first applicant and others instituted civil proceedings against Mr M in the multi-member first instance civil court (Πολυμελές Πρωτοδικείο) of Syros. They claimed that he had unlawfully taken over part of their land in Ayios Yiannis. On 14 February 1992 the court found in favour of the plaintiffs.

On 30 March 1992 Mr M entered a caveat against this judgment (ανακοπή ερημοδικίας), which had been issued in his absence. His recourse was rejected on 23 November 1992 (decision No. 138/1992). On 28 January 1993 Mr M appealed against this decision. The Court of Appeal (Εφετείο) of the Aegean reversed the decision No. 138/1992 and sent the case back to the first instance civil court (decision No. 120/1993).

A hearing took place on 14 January 1994. In a preliminary decision of 31 March 1994, the first instance court ordered investigative measures. The witnesses were heard on 13 April 1995, 4 July 1995, 10 October 1995, 12 December 1995, 12 February 1996 and 2 April 1996.

Following an application by the first applicant of 15 March 1998, a hearing was set down for 11 December 1998. The hearing was finally held on 28 May 1999. On 21 June 1999 the first instance court found in favour of the first applicant (decision No. 98ΤΠ/1999).

On 7 December 1999 Mr M appealed against this decision. The proceedings are currently pending before the Court of Appeal of the Aegean. The parties have not applied yet for a hearing to be fixed.

3. Threatened demolition of the applicants' house

On 23 June 1993 the applicants received a notice to the effect that their house in Ayia Kiriaki - Apokofto had been built without an authorisation and should be demolished. The applicants appealed to the competent administrative board. Their appeal was rejected on 28 September 1994.

On 6 October 1994 they applied to the Council of State for judicial review of the decision of the administrative board. On a request by the applicants, the Council of State decided to suspend the demolition of the applicants' house (decision No. 790/13.2.1994).

At first, the hearing was set down for 28 November 1995 but it was continuously postponed.

In 1999 a new law (No. 2721/1999) changed the rules of competence and the case was referred to the Court of Appeal of Piraeus, which heard the case on 27 June 2000.

The proceedings are still pending.

B. Relevant domestic law

1. Article 108 of the Code of Civil procedures reads as follows:

> "The parties shall be responsible for taking procedural steps on their own initiative unless the law provides otherwise".

2. Articles 15 and 16 of Law No. 1337/1983 provide that the demolition of a building constructed on the basis of a building permit which was subsequently revoked for any reason is suspended if the owner of the building was in good faith.

COMPLAINTS

1. The applicants complain, under Articles 5, 6 § 1, 8 and 10 of the Convention and Article 1 of Protocol No. 1, about the failure of the authorities to comply with decisions Nos. 3955/1995 and 3956/1955 of the Council of State.

2. The first applicant complains under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of the length of the civil proceedings against Mr M.

3. The applicants also complain about the length of the proceedings they have instituted before the Council of State in connection with the threatened demolition of their house.

THE LAW

1. The applicants complain about the failure of the authorities to comply with decisions Nos. 3955/1995 and 3956/1955 of the Council of State. They invoke in this respect Articles 5, 6 § 1, 8 and 10 of the Convention and Article 1 of Protocol No. 1.

Article 5 of the Convention guarantees the right to liberty and security. Article 6 § 1 of the Convention guarantees the right to a court for the determination of one's civil rights and obligations and to a hearing within a reasonable time. Article 8 of the Convention guarantees the right to respect for private life and home. Article 10 of the Convention guarantees the right to freedom of expression. Article 1 of Protocol No. 1 guarantees the right to property.

The Court considers that there is no appearance of a violation of Articles 5 or 10 of the Convention in the particular circumstances. It considers that this complaint falls to be examined only under Articles 6 § 1 and 8 of the Convention and 1 of Protocol No. 1.

Article 6 § 1 of the Convention

The Government first argue that the applicants cannot claim to be victims of a violation of the Convention within the meaning of Article 34. The application for judicial review of the contested administrative acts was merely seeking the redress of the violation of collective rights relating to the environment.

The Government further contest the applicability of Article 6 § 1 in the instant case. The dispute which arose between the applicants and the administration concerned the conformity of administrative acts to the constitutional provision protecting the environment. The Government further contend that the dispute did not concern any proceedings whose outcome was decisive for the applicants' civil rights and obligations: the purpose of the contested administrative acts was not to affect the applicants' rights specifically but to issue building permits relating to properties of third persons. The applicants were in no way hindered in enjoying or using their property.

Alternatively, the Government argue that the urban planning has taken all necessary measures to comply with the decisions of the Council of State. In particular, it no longer applies the prefect's decision No. 2400/1988 and has elaborated a land-planning study for the area. It is true that the prefect issued two decisions (Nos. DP2315/1996 and DP2316/1996) which excluded the contested buildings from demolition; in this respect the Government submit that the demolition of the buildings in question was not the only possible way to comply with the decisions of the Council of State. On the contrary, it is admitted both by the relevant legislation and the general legal principles that the demolition of a building is an extreme

measure and should be avoided, especially when the owner of the building was in good faith and had no reasons to believe that the building permit on the basis of which the construction took place would be subsequently annulled. Therefore, the Government conclude that the authorities have complied in substance with decisions Nos. 3955/1995 and 3956/1955 of the Council of State.

The applicants reply that they have not introduced before the Council of State an *actio popularis*, but have acted as individuals personally affected by the specific building permits. They note that they have a house at the area where the boundaries were withdrawn and that their property is next to the place where the two building permits for entertainment places were issued. This was the reason why the Council of State found that they had an obvious interest in seeking the annulment of the contested administrative acts.

Moreover, the applicants claim that Article 6 itself confers rights to individuals. These rights require the execution of every judgment. The Contracting States may have some discretion in allowing individuals to seek judicial review, but when they allow it, it is certain that they assume, under the Convention, the obligation to guarantee the execution of the judgment. Accordingly, when individuals have standing to apply for judicial review, they have, under Article 6 of the Convention, a right to have the judgment executed. This is what happened in the present case.

Lastly, the applicants contest the Government's allegation that national authorities had complied in substance with decisions Nos. 3955/1995 and 3956/1955. They are surprised that the Greek Government consider the exclusion of the contested buildings from demolition as compliance with the annulment of the building permits. They claim that the only legal consequence of the annulment of the building permits was the demolition of the buildings which were built upon these permits and note that the Greek authorities have failed to do so.

The Court will first examine whether Article 6 is applicable to the proceedings concerning the annulment of the building permits.

The Court recalls that Article 6 § 1 of the Convention applies to disputes over rights which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, among many other authorities, the Masson and Van Zon v. the Netherlands judgment of 28 September 1995, Series A No. 327, pp. 19-20, § 48-52 and the Werner v. Austria judgment of 24 November 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2507, § 34).

As regards the present case, the Court notes that the applicants were given *locus standi* in the proceedings before the Council of State "because they owned property in the area concerned". Moreover, the Council of State admitted partly the applicants' appeal. In the light of the above, the Court has no doubt that there was a dispute over a "right" within the meaning of Article 6, which was genuine and serious. It therefore remains to be determined whether the outcome of the proceedings in issue was directly decisive for the applicants' civil rights and obligations.

The Court notes that the applicants contested, among other, the lawfulness of the redrawing of the boundaries of the settlements in which they owned property. The redrawing of the boundaries, apart from potential effects on the environment, could have also had adverse repercussions on the economic value of the applicants' property. Therefore, in this respect the proceedings before the Council of State were decisive for their private rights and obligations (Wiesinger v. Austria judgment of 30 October 1991, series A No. 213, p. 20, § 50). Accordingly, Article 6 § 1 is applicable in the instant case.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which should depend on an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

Article 8 of the Convention

The Government consider that any nuisance that the applicants might have suffered from the construction of the new buildings and the general organisation of the social character of the region should be tolerated as an inevitable and temporary consequence of the urban way of life. Therefore, any interference with the applicants' rights guaranteed by paragraph 1 of Article 8 was clearly justified under paragraph 2.

The applicants claim that the development of the swamp in the south-eastern part of Tinos has led to the destruction of the physical environment and has affected their life. In particular, the area has lost all of its scenic beauty and its character has changed profoundly from that of a natural habitat for wildlife to a tourist development. Part of the swamp has been reclaimed so as to create, in addition to the buildings, a car park and a road. There are noises and lights on all night and a lot of environmental pollution from the activities of the enterprises in the vicinity. The applicants affirm that this deterioration was caused by illegal acts of the State authorities, which have not only failed to fulfil their positive duty to take reasonable and appropriate measures to secure their rights under Article 8, but also, by their own activity, affected illegally the enjoyment of these rights.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which should depend on an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

Article 1 of Protocol No. 1

Insofar as the applicants allege that the omission of the authorities to demolish the buildings in question violates their property rights, the Court notes that these buildings were not built on the applicants' property but next to it. Moreover, it does not appear that the applicants raised any particular complaint concerning an issue falling under Article 1 of Protocol No. 1, other than the adverse effects that the impugned measures could have to the surrounding environment. This general complaint does not suffice to justify examination of the case under Article 1 of Protocol No. 1.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The first applicant complains under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of the length of the civil proceedings against Mr M.

The Court considers that there is no appearance of a violation of Article 1 of Protocol No. 1 in the particular circumstances. It considers that this complaint falls to be examined under Article 6 § 1 of the Convention.

In the Government's submission, the proceedings have been protracted by the conduct of the parties. In particular, the Government note that, in civil cases, it is for the parties to take the initiative to ensure that the proceedings progress ; they are *inter alia* responsible for obtaining hearing dates. The Government claim that the first applicant did not pursue her suit diligently.

The first applicant replies that, even if the parties are partly responsible for the delays as the Government suggest, her case was a routine property dispute concerning a small piece of land in a Greek island. There is no reason why it took more than eight years for the first instance court to reach a final decision.

The Court considers, in the light of the criteria established by its case-law on the question of "reasonable time", and having regard to all the material in its possession, that an examination of the merits of the complaint is required.

3. The applicants also complain under Article 6 § 1 of the Convention about the length of the proceedings they have instituted before the Council of State in connection with the threatened demolition of their house.

The Government argue that the applicants have failed to speed up the proceedings by asking for an expeditious hearing. In any event, they recall

that the Council of State has decided to suspend the demolition of their house. Therefore, even if the proceedings are still pending, the applicants have rapidly enjoyed judicial protection for their rights.

The applicants reply that the problem did not rest with the scheduling of the hearings but with their consecutive adjournments, and that the failure to use the extraordinary request for expeditious scheduling cannot explain the length of the proceedings. They further affirm that the suspension of the demolition is an interim measure and as such is far from being a resolution of the dispute. Moreover, it does not remedy the adverse consequences stemming from the threatened demolition.

The Court considers, in the light of the criteria established by its case-law on the question of "reasonable time", and having regard to all the material in its possession, that an examination of the merits of the complaint is required.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicants' complaint about the failure of the authorities to comply with decisions Nos. 3955/1995 and 3956/1955 of the Council of State, as well as their complaint about the length of the proceedings against Mr M and the proceedings concerning the demolition of their house;

Declares inadmissible the remainder of the application.

Erik FRIBERGH
Registrar

András BAKA
President