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

THIRD SECTION

DECISION

Application no. 44116/13
Evaggelos NIKAS and Others
against Greece

The European Court of Human Rights (Third Section), sitting on 12 September 2023 as a Committee composed of:

Yonko Grozev, *President*,
Ioannis Ktistakis,
Andreas Zünd*, judges*,
and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 44116/13) against Greece lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 3 July 2013 by the applicants listed in the appended table ("the applicants") who were represented by Mr C. Papasotiriou, a lawyer practising in Athens;

the decision to give notice of the application to the Greek Government ("the Government"), represented by their Agent's delegates, Mrs A. Dimitrakopoulou, Senior Advisor, and I. Kotsoni, Legal Representative at the State Legal Council;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT-MATTER OF THE CASE

1. The case concerns allegations of non-enforcement of a final judgment and the remedies available to the applicants as well as allegations of a violation of their right to property.

2. In 1999 the compulsory expropriation of a plot of land, measuring 1,240,220 square metres situated at "Patima Dimogli" in Attica, was ordered for the construction by the Workers' Housing Organisation (*Οργανισμός Εργατικής Κατοικίας*) of the Olympic village for the Olympic Games in 2004.

The applicants were tenants of 40,000 square metres of that plot which they had been renting for cultivation since 1992.

3. Judgment no. 779/2000 of the Athens Court of First Instance assessed the provisional unit amount for compensation for the land. The total amount of 44,964,069 euros (EUR) was deposited in the Consignment Deposits and Loans Fund (*Ταμείο παρακαταθηκών και Δανείων*) and the expropriation was concluded. Judgment no. 6672/2001 of the Athens Court of Appeal assessed the final unit amount as regards the land, constructions and crops. The applicants were not parties to those proceedings. The final unit amount for big, medium and small ornamental plants was fixed at approximately (conversion from Greek drachmas) EUR 22.01, 11.74 and 7.34 respectively. The final unit amount for bulbs or other plants' cultivations was fixed at EUR 0.21 per square metre.

4. The applicants claimed that they cultivated and built constructions on the plot. On 22 February 2007 they lodged an application for the assessment of the final unit amount for 20 greenhouses. The Athens Court of Appeal by judgment no. 4407/2009 rejected their application as inadmissible for lack of *locus standi*. It held that only lessors and not lessees had the right to compensation for the immovable property and all fixtures on it. Their appeal on points of law was also dismissed by the Court of Cassation by its judgment no. 1608/2011 which upheld the appeal court's conclusion.

5. In the meantime, Law no. 3130/2003 had introduced a specific procedure for the recognition of the beneficiaries of compensation following the expropriation for the construction of the Olympic village. Section 39 of this law provided that the alleged owners claiming property rights on the plot could submit to an administrative committee an application along with supporting titles to be recognised beneficiaries of compensation. The committee could award compensation for the crops and buildings, the value of which was finally determined by the competent court, to the owners who planted crops or built constructions at their expense and provided that they submitted a specific request for that together with their request to be recognised beneficiaries of compensation.

6. In 2003 the applicants lodged an application before that committee for crops and constructions which was rejected by decision no. 361/2008 as those had not been included in the cadastral plan. In 2004 the cadastral plan was completed to include crops described as belonging to the applicants in their capacity of tenants: 472,800 flower bulbs on 8,400 square metres and 20 greenhouses. The applicants appealed (*ανακοπή*) against decision no. 361/2008 before the single-member Athens Court of First Instance which by its judgment no. 472/2012 held that each of the applicants was a beneficiary of 1/3 of the compensation determined by judgment no. 6672/2001 of the Athens Court of Appeal corresponding to the claimed flower bulbs and greenhouses (see paragraph 3 above). The Workers' Housing Organisation were not present nor represented at this trial.

7. On 7 August 2012 the applicants served a copy on the Consignment Deposits and Loans Fund claiming compensation which they estimated at a total amount of EUR 3,468,518.74 based on the price unit for small ornamental plants (EUR 7.34). On 5 September 2012 they served a copy of judgment no. 472/2012 on the Workers' Housing Organisation.

8. On 11 December 2012 the applicants lodged an application before the three judges Committee of the Court of Cassation, competent for the assessment of domestic decisions' enforcement by the authorities, and requested the compliance of the administrative authorities with judgment no. 472/2012 of the Athens Court of First Instance. The Committee by its judgment no. 7/2013 dismissed their request ruling that judgment no. 472/2012 provided the basis for them to request, by way of recovery action, the satisfaction of their claim.

9. The applicants lodged an application before the Court on 3 July 2013 complaining that the non-enforcement of the final and binding judgment no. 472/2012 and the non-payment of compensation to them violated their right to a fair trial under Article 6 § 1 and right to property under Article 1 of Protocol No. 1 to the Convention. They also complained under Article 13 that there was no legal remedy in respect of the non-enforcement of final judgment no. 472/2012.

10. Following an application (*ανακοπή*) lodged by OAED *('Hellenic Manpower Employment Organization' - Οργανισμός Απασχόλησης Εργατικού Δυναμικού*), successor of the Workers' Housing Organisation, against payment order no. 1776/2019 issued in the name of the applicants, the Athens Court of First Instance by judgment no. 69/2021, published on 14 January 2021, declared the payment order null and void. It ruled that the Court of Cassation by its judgment no. 1608/2011 had ruled with the force of *res judicata* that the applicants did not have a right to compensation as they were tenants (see paragraph 4 above). Subsequently, the applicants' appeal was dismissed by the Athens Court of Appeal judgment no. 3876/2022 of 20 July 2022 which confirmed judgment no. 69/2021. The applicants appealed on points of law on 7 September 2022.

THE COURT'S ASSESSMENT

11. The Government raised several objections as to the admissibility of the application. In particular, as regards the complaint under Article 1 of Protocol No. 1 to the Convention, they pointed out that the applicants did not make use of remedies against the lessors and plot owners in accordance with the tenancy law, unjust enrichment or tort provisions, which are not extraordinary remedies but usual civil legal remedies well-established under domestic law; they submitted domestic case-law showing the effectiveness of these remedies. It is not necessary to examine these objections as the application is in any event inadmissible for the reasons stated below.

12. The general principles on the non-enforcement of judgments have been summarised, among others, in *Vasiliadou v. Greece* (no. 32884/09, § 33, 6 April 2017).

13. However, for Article 6 § 1 to be applicable under its "civil" head, there must be a "dispute" over a "private right" 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 being insufficient to bring Article 6 § 1 into play (see *Denisov v. Ukraine* [GC], no. 76639/11, § 44, 25 September 2018; *Nagovitsyn v. Russia*, no. 6859/02, §§ 39-41, 24 January 2008; and *Astikos Oikodomikos Synetairismos Nea Konstantinoupolis v. Greece* (dec.), no. 37806/02, 20 January 2005).

14. In the present case, as noted by the domestic courts, it was not possible under Greek law for the applicants in their capacity as tenants of the plot having the possession of fixtures to raise a compensation claim against the State in expropriation proceedings. Section 14 § 1 of Law no. 2882/2001 on Expropriations explicitly provided that only those who had property rights or other rights *in rem* on the expropriated property could be party to the proceedings related to compensation. Section 26 § 9 excluded mere possessors from the right to compensation. Similarly, Article 39 of Law no. 3130/2003 (see paragraph 5 above), which regulated the procedure at stake, provided the possibility to those claiming property rights over land plots to be recognised beneficiaries of compensation and to be awarded compensation for their crops or constructions on the plot (see *Lekkas and others v. Greece* (dec.), no. 38037/07, 26 March 2009).

15. In the context of the proceedings on the assessment of the final unit amount of the compensation, judgment no. 4407/2009 of the Athens Court of Appeal dismissed the applicants' appeal for lack of *locus standi* ruling that only lessors had the right to request compensation for the immovable property and all fixtures on it. By its judgment no. 1608/2011 the Court of Cassation upheld that conclusion ruling that the completion of the expropriation terminated the lease contract and the lessee had an obligation to return the rented property (see paragraph 4 above). The courts explained that the lessees did not have a right to compensation against the State, neither they had *locus standi* to request the assessment of the final unit amount of their constructions or crops, as fixtures were attached to the property and could not be evaluated as a separately expropriated asset. Any annuity linked to business exercised on the property was a part of the assessment of the plot's value. The courts stressed that the lessees could bring an action against the lessors in accordance with the tenancy law, unjust enrichment or tort provisions.

16. Judgment no. 472/2012 of the single-member Athens Court of First Instance concluded that the applicants were beneficiaries of compensation

(see paragraph 6 above). However, the applicants failed to inform the court that they had been excluded from the proceedings on the assessment of the compensation by a court decision for lack of *locus standi* as they were lessees. Consequently, that previous decision could not have taken into account the aforementioned findings.

17. The Court finds no reason to differ from the conclusions of the Court of Cassation in its judgment no. 1608/2011 (see paragraph 4 above) which found that the applicants did not have a valid claim for compensation relating to the fixtures on the rented property under domestic law and practice. It was for the domestic courts to assess the applicable procedure for the enforcement of the judgment at issue in the light of the circumstances of the case and the applicable law. Their assessment cannot be said to have been arbitrary or manifestly unreasonable (compare with *Kandyba and Others v. Ukraine*, no. 33137/16 (dec.), no. 33137/16, § 56, 13 October 2020). In such circumstances, the respondent Government cannot be held liable for the non-enforcement of the judgment (contrast with *Georgakopoulos and others* ([Committee], no. 24189/11, § 42, 19 December 2019, where the applicants were owners of the expropriated property and obtained an enforceable claim against the State, not disputed by the Government).

18. The Court is thus unable to conclude that Article 6 § 1 of the Convention applied to the proceedings relating to enforcement of judgment no. 472/2012 of the single-member Athens Court of First Instance (see *Nagovitsyn*, cited above, § 40). Having regard to the above, the complaint under Article 6 § 1 of the Convention is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

19. The applicants also complained under Article 13 of the lack of an effective remedy in respect of their non-enforcement complaint. As the applicants' complaint under Article 6 of the Convention is incompatible *ratione materiae*, it follows that they do not have an arguable claim and that Article 13 does not apply. The complaint is therefore incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

20. As regards the complaint under Article 1 of Protocol No. 1 to the Convention, the Court reiterates that to constitute an "asset" or "possessions" within the meaning of Article 1 of Protocol No. 1 and, consequently, to attract the guarantees of this provision, a claim, for example, a judgment debt, should be sufficiently established to be enforceable (see, among other authorities, *Kopecký v. Slovakia [GC]*, no. 44912/98, §§ 35 et seq., ECHR 2004-IX; see also *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59). As explained above under Article 6, the domestic courts ruled that the applicants did not have a right to compensation as they were tenants. The Court considers that the applicants' claim was not sufficiently established so as to qualify as an "asset" within the

meaning of Article 1 of Protocol No. 1. The complaint is thus also incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 5 October 2023.

Olga Chernishova Deputy Registrar	Yonko Grozev President

Appendix

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Evaggelos NIKAS	1963	Greek	Athens
2.	Ioannis NIKAS	1962	Greek	Athens
3.	Ioannis NIKAS	1972	Greek	Athens