CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 46372/99
by Stavros PAPASTAVROU
against Greece

The European Court of Human Rights (Second Section), sitting on 4 October 2001 as a Chamber composed of

Mr A.B. BAKA, *President*,
Mr C.L. ROZAKIS,
Mr P. LORENZEN,
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 6 October 1998 and registered on 25 February 1999,

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 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 25 Greek nationals whose names appear in the annex. They are represented before the Court by Mr P. Yatagantzidis and Ms E. Metaxaki, lawyers practising in Athens.

A. The circumstances of the case

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

The applicants are involved in a long-standing dispute with the State concerning the ownership of a plot of land in Omorphokklisia in Galatsi. They have so far obtained a number of rulings in their favour from the civil courts and the public prosecutors of the Athens first instance and appeal courts.

On 10 October 1994 the prefect of Athens declared an area, including the plot of land in question, "reafforestable" (it should be turned back into a forest). As it was expressly stated in the prefect's decision, the aim was "... to recreate the forest greenery destroyed or downgraded by illegal quarry activities and other illegal actions such as land clearing, constructions etc. in an area of 935,483,000 sq. m. This area was also included in a reafforestation decision no. 108424/1934 concerning a wider region in Attica and taken by the Ministry of Agriculture. According to that decision, the area "consisted, before the destruction and downgrading of the forest vegetation ..., of pine-tree forest which was progressively downgraded and tended to disappear ...".

However, in a document of the Forest Inspection of Athens of 16 November 1968, it was stated that half of the area was agricultural and half covered by bush and five pine-trees. The Forest Inspection expressed the opinion that, considering the aspect of the area, it has never been a forest and could not be reafforested, since the decision of the Ministry of Agriculture of 1934 excluded from the scope of the reafforestation barren lands or plots owned by individuals. The Forest Inspection concluded that the city plan could be extended to the impugned area. Two other documents of the Ministry of Agriculture, dated 3 December 1948 and 11 September 1949, as well as an expert report concerning the "Veikou Estate" and established by some university professors in 1997, arrived at the same conclusion.

On 23 December 1994 the applicants challenged the decision of the prefect before the Council of State. They claimed that they were owners of properties that originated from the parcelling of a broader area included in

the major area known as "Veikou Estate" and which were located inside the reafforestable area. In particular, in their appeal, they contended that the prefect's decision aimed at depriving them of any property or possession rights on the contested plot. In their additional observations of 26 July 1996, they claimed that the cause of the adoption of that decision was the attempt of the State to create a dispute over the property or possession rights of the applicants, although the legal conditions for the issuance of such a decision were not met since the area has never constituted a forest in the past.

On 20 January 1995 the applicants, invoking section 43 of Law No. 998/79, invited the State to purchase the plot in question from them. The authorities did not reply.

On 6 April 1998 the Council declared the applicant's appeal inadmissible on the ground that the prefect's decision was not an executory act since it simply confirmed the decision issued by the Minister of Agriculture in 1934. In particular, the Council of State held that the decision of 1934 remained in force because no other act, of an equivalent force, had reversed it. The subsequent acts of the Administration, such as the interpretation of some aerial photos, could not be considered as a new assessment of the situation which could give to the decision of the prefect an executory character.

According to Opinion No. 23/1987 of the Consultative Board of Public Estates, which was approved by the Minister of Finance in 1987 and completed by the same Minister in 1992, the "Veikou Estate" belongs to the State, since the heirs of Mr Veikos failed to prove that they had property rights resulting from title deeds or adverse possession on the estate. On the basis of that opinion, the State Lands Authority registered as public estates, at first the area possessed by the heirs of Mr Veikos and then all the plots which had been transferred to third parties by these heirs. Several proceedings against the State, engaged by the heirs of Mr Veikos as well as by third parties, are still pending before the domestic courts.

On 22 October 1999 the Forest Inspection of Athens qualified, according to the procedure prescribed by Law No. 998/1979, an area of 189,475 sq. m. located within the area concerned by the prefect's decision of 10 October 1994. The Forest Inspection concluded that only 20,650 sq. m. of that surface was forest and reafforestable area. The Committee for the Settlement of Forest Disputes confirmed that decision and an appeal is now pending before the Appeal Committee. Moreover, by a joint decision of 25 January 2001, the Ministers of Finance, Culture, Environment and Civil Engineering expropriated part of the area concerned by the prefect's decision of 10 October 1994, for the purposes of the construction of a sports centre for the Olympic Games of 2004.

B. Relevant domestic law and practice

1. The Constitution

The relevant provisions of the Constitution read as follows:

Article 24 § 1

"The protection of the natural and cultural environment constitutes a duty of the State. The State is bound to adopt special preventive or repressive measures for the preservation of the environment. Matters pertaining to the protection of forests and forest areas in general shall be regulated by law. Alteration of the use of State forests and State forest areas is prohibited, except where agricultural development or other uses imposed for the public interest prevail for the national economy."

Article 117 § 3

"Public or private forests or forest areas which have been destroyed or are being destroyed by fire or have otherwise been deforested or are being deforested, shall not thereby relinquish their previous designation and shall compulsorily be proclaimed reafforestable, the possibility of their disposal for other uses being excluded."

The Government submit that, in the sense of Article 17 § 3 which, in accordance with the established case-law of the Council of State is directly applicable, the protection of forests is enacted without any time-limit and is not obstructed by any illegal destruction or deforestation. Moreover, the declaration of an area as reafforestable and the prohibition of any use that would obstruct reafforestation is not left to the discretion of the Administration but is mandatory.

2. Law No 998/1979 relating to the protection of forests and forest expanses

The relevant articles of Law No. 998/1979 read as follows:

Article 10 § 3

"A Committee for the Settlement of Forest Disputes is established at the seat of each prefecture, which is competent to settle disputes concerning the character of an area or part of the surface as forest area or the limits of it."

Article 14

"1. If no forest registry has been drawn up, the characterisation of an area or part of the surface as forest area and the determination of the limits thereof ... is made at the request of any person having a lawful interest or ex officio, by act of the competent forest inspector.

2. ...The act is notified to the person, legal entity or public service which has submitted the request....

3. The prefect or any other person who has lawful interest may object to the above-mentioned act, within two months from the notification ..., before the Committee mentioned in Article 10 § 3 ... The Committee and the Appeal Committee ... decides by a reasoned decision within three months from the filing of the objection....”

Article 38 § 1

“Forests and forest areas which are destroyed or deforested by fire or illegal logging are declared reafforestable, regardless of their special category or their location ...”

Article 41

“1. The decision declaring an area as reafforestable is taken by the competent prefect. It clearly indicates the limits of the area and is accompanied by a plan ...

3. ... the decision of the prefect mentioned in paragraph 1 is taken following the recommendation of the competent forest inspection.”

The Government stress that the above-mentioned Articles establish a special judicial procedure for the characterisation of an area as forest area and aim at settling disputes in a binding way for both the Administration and the individuals.

COMPLAINTS

1. The applicants submit that applying for judicial review of the prefect’s 1994 decision was the only remedy they had under domestic law. According to the courts’ case-law, they could not claim compensation for their loss of property on the sole basis of the 1994 decision and there was no appeal against the refusal of the authorities to purchase their land.

2. The applicants complain under Article 6 § 1 of the Convention of the decision of the Council of State. They submit in this connection that the 1934 decision of the Minister of Agriculture had declared the entire Attika “reafforestable” and had never been enforced because of its general and vague nature. In the intervening years the State had repeatedly considered the plot of land in question not to be a forest. The prefect could not have issued the 1994 decision without ordering a new inquiry.

3. The applicants also complain of a violation of Article 1 of Protocol No. 1. They submit that the area in question cannot be turned into a forest. It had never been a forest and the authorities’ only aim in declaring it “reafforestable” was to apply pressure on the applicants in connection with the underlying dispute concerning the ownership of the plot of land.

Declaring an area "reafforestable" radically restricts the use to which its owners can put it, since they can only plant trees on it. Finally, domestic law does not provide for any compensation.

THE LAW

1. The applicants allege 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."

a) The Government submit that the applicants did not exhaust domestic remedies, as required by Article 35 § 1 of the Convention. Firstly, the complaints which the applicants raised before the Council of State were exclusively based on domestic law and made no reference to the Convention. The vague allegation in their appeal to the deprivation of the opportunity to freely exercise their property and possession rights on parts of the reafforestable area is purely incidental and subsidiary to their main reason of appeal, that is the abuse of power on the part of the Administration, and cannot be considered as a complaint pertaining to Article 1 of Protocol No. 1. Even if the Council of State had the possibility to examine ex officio the applicant's case under the Convention, the applicants were not relieved from the obligation to invoke the Convention before it.

Secondly, the Government recall that the obligation to exhaust domestic remedies requires the applicant to comply with the procedural rules attached to the remedy. In the present case, the Council of State dismissed the applicant's appeal on procedural grounds, namely because the challenged act was not executory. It transpires from the judgment of the Council of State that the decision which should have been challenged was that of the Ministry of Agriculture of 13 September 1934, which had characterised the broader area, the Veikou Estate (including the applicants' plots), as forest area.

Thirdly, the applicants knew that the Greek State considered the Veikou Estate as public domain. Accordingly, if they considered that they had property rights on the contested plot, they should have applied to the competent civil courts in order to be recognised owners of the plot

according to Article 70 of the Code of Civil Procedure. However, the applicants never filed such an action. The ownership status of the land is determined by the civil courts. In this respect, the First Instance Court of Athens dismissed in 1999 an action introduced by an association against the State concerning the recognition of its property rights on a plot situated near the applicant's plot. The rulings in favour of the applicants, mentioned in their application, and delivered from the civil courts and the public prosecutors of the Athens first instance and appeal courts do not settle the ownership status of the contested plot: the first concerned the validity of the eviction order taken by the Administration against the applicants and the second the provisional settlement of the possession of the plot.

Finally, as regards the forest character of the plot, the Government claim that the applicants never engaged the proceedings prescribed by Article 14 of Law No. 998/1979. According to the Council of State's case-law, these proceedings are autonomous and distinct from those concerning the annulment of a decision declaring an area reafforestable and can be engaged in parallel with it; therefore, the applicants had the possibility to initiate it even after the adoption of the prefect's decision of 10 October 1994.

The applicants stress that despite the fact that the Council of State dismissed their application as inadmissible, all their grounds of appeal before it were founded, directly or indirectly, on the right to property, as it transpires from the text of their appeal and their additional observations to the Council of State.

As regards the Government's argument that the applicants failed to engage proceedings before the civil courts, they recall that the violation of Article 1 of Protocol No. 1 was caused by a decision of the prefect. Such a decision gives rise to an administrative dispute which can only be decided by the administrative courts. Judgment no. 2889/199 of the First Instance Court of Athens mentioned by the Government did not concern the applicants' property and did not settle the issue of the validity of the reafforestation decision. Besides, in 2000 the Athens Court of Appeal quashed the above-mentioned judgment, on the ground that the State had always considered that the plot in question was owned by Mr Veikos heirs.

Finally, the applicants submit that proceedings under Articles 10 and 14 of Law No. 998/1997 were not appropriate against the prefect's reafforestation decision. Such a decision has no bearing on the procedure aiming at qualifying an area as forest area or on the objections which can be raised by virtue of Article 14 § 3 of the Law. A decision quashing an act whereby the Forest Inspector qualifies an area as forest area does not affect a decision of a prefect to reafforest. There is an inconsistency between the two procedures, which affects the efficiency of the existing remedies and creates a risk of obtaining contradictory decisions concerning the same area, as it transpires from the proceedings pending before the Committee for the Settlement of Forest Disputes and the decision to expropriate another plot of

the area concerned by the prefect's decision for the purposes of the construction of a sports centre for the Olympic Games.

The Court recalls that the only remedies Article 35 § 1 requires to be exhausted are those that are available and sufficient and relate to the breaches alleged. Moreover, an applicant who has availed himself of a remedy capable of redressing the situation giving rise to the alleged violation, directly and not merely indirectly, is not bound to have recourse to other remedies which would have been available to him but the effectiveness of which is questionable (see the Manoussakis and Others v. Greece judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 33).

With regard to the first limb of the objection, it is sufficient for the Court to find that in their submissions to the Council of State the applicants relied on the interference with their property rights. They therefore gave the Council of State an adequate opportunity to remedy by its own means the situation complained of.

With regard to the second limb of the objection, the Court considers that, in the particular circumstances of the case, it is difficult to argue that the applicants could have foreseen that their judicial review application before the Council of State would have been declared inadmissible. The Court recalls in this respect that the Council of State dismissed the application not on a purely formalistic and procedural ground, such as time-bar or lack of reasons, but because it held that the prefect's decision of 1994 confirmed a ministerial decision of 1934, which the applicants considered as deprived of any legal effect because it remained a dead-letter.

With regard to the third limb of the objection, the Court considers with the applicants, who claimed to be owners of the contested plot, that the only competent court which could quash the prefect's decision was the Council of State.

With regard to the fourth limb of the objection, the Court notes that the administrative proceedings prescribed by Articles 10 and 14 of Law No. 998/1979 concerns a different procedure, that is the qualification by the Forest Inspection of an area as forest area, which has no bearing on the legality of a prefect's decision to declare an area reafforestable.

The objection of non-exhaustion must accordingly be dismissed.

b) As regards the merits of the application, the Government do not present any view on the matter.

The applicants draw the conclusion that the Government clearly albeit indirectly admit the alleged violation.

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.

2. The applicants allege a violation of Article 6 § 1, which insofar as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

a) The Government submit that the applicants' complaint under Article 6 § 1 is incompatible *ratione materiae* with the provisions of this Article. The object of the proceedings before the Council of State was the validity of an administrative act, namely the decision of the prefect of Athens declaring an area reafforestable and did not concern a "civil" right within the meaning of Article 6, namely a property right. If the Council of State had examined the substance of the case, it would have considered only whether the conditions for the adoption of the impugned decision were satisfied according to the rules of administrative law.

The applicants maintain that although the proceedings before the Council of State aimed at quashing an administrative act, their outcome was decisive for a right of civil character, namely the right to use and exploit their property. The impugned administrative act reduced dramatically the value of their plot and thus directly affected the applicants' property rights.

The Court notes that the proceedings before the Council of State concerned the legality of the prefect's decision whereby the broader area in which their plot was situated was declared reafforestable. Such a decision entailed for the applicants an infringement of their property rights on the said plot since it deprived them of any possibility to build on this plot, to cultivate it, to rent it or to exploit it in any other manner; it only authorised them to plant trees on it. In their application to the Council of State the applicants complained in substance about an inadmissible interference with their right to property and invited the Council of State to annul the prefect's decision. The Court is therefore satisfied that the outcome of the proceedings were directly decisive for the civil right claimed by the applicants.

Accordingly, the objection must be dismissed.

b) As regards the merits of the application, the Government do not express any view on the matter.

The applicants submit that the Government thus admit the alleged violation. Moreover they reiterate that by rejecting their application as inadmissible, the Council of State deprived them of the opportunity to have their case decided by a court. As a result, it confirmed the unlawful deprivation of the applicants' property by the State without compensation. The impugned decision could by no means be considered as a non-executory act, because it was issued after a new assessment of the factual situation : the ministerial decision of 1934 had never been applied

because of its general and vague character ; it thus lost over the years any legal force it might have had; furthermore, as it transpires from the documents of the Forest Inspection of 16 November 1968 and of the Ministry Agriculture of 3 December 1948 and 11 September 1949, the State never considered this area as reafforestable.

The applicants further submit that the decision of the Council of State amounts to a denial of justice. The Council of State did not give them the opportunity to present their case and placed them at a substantial disadvantage vis-à-vis the State, in breach of the right to a fair trial. The applicants recall that the Court has found a violation of Article 6 § 1 when it found that the judicial review carried out by the courts could not extend to the merits of the case or when a remedy does not permit a full review of a measure affecting a civil right (judgments in the cases of W. v. the United-Kingdom and Sporrong and Lönnroth v. Sweden of 8 July 1987 and 23 September 1982, Series A nos. 121 and 52 respectively).

The Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *Garcia Ruiz v. Spain* [GC], no. 30544/96, ECHR 1999-I, § 28).

In the instant case, the Court considers that the applicant's complaint under Article 6 of the Convention concerns the outcome of the proceedings before the Council of State. The applicants disagree with the judgment of the Council of State because it concluded that the prefect's decision of 1994 had not an executory character. However, the Court cannot accept this argument. It notes that the Council of State decided the case according to the Greek legislation and Constitution and after having taken into account all the relevant arguments of the applicants; the latter had submitted two voluminous memorials in which they developed their position at length. It cannot be said that the Council of State, by finding that the impugned decision was not an executory act, decided arbitrarily or that its decision took the applicants by surprise. In effect, the Court notes that a whole chapter of the applicants' additional observations (pages 36-40) concerned the point on which the Council of State based its decision.

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

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint under Article 1 of Protocol No. 1;

Declares inadmissible the remainder of the application.

Erik FRIBERGH
Registrar

András BAKA
President

ANNEX

Stavros PAPASTAVROU
Demosthenis BOUBAS
Nikolaos TZOUVALAS
Antonios FRANGOULOPOULOS
Petros PAPATHANASIOU
Eleni KATSIFOU
Vasiliki TSOURI
Ioannis HILARIS
Chrysanthi HILARI
Sonia NALPANTIDOU
Efrosini PETROPOULOU
Mavroudis MITSOPOULOS
Georgia MYLONA- MITSOPOULOU
Dimitra KORDYLLA
Menelaos VAMVAKARIS
Andreas DOUROS
Vasilios SPANOUDAKIS
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Maria GIAKOUMAKI
Panagiotis KARRAS
Angelos SFENDILIS
Georgios RAVANIS
Olympia KARENTZOU
Alkiviadis PILIOS