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. 46806/99
by Yeoryios SAKELLAROPOULOS
against Greece

The European Court of Human Rights (Second Section), sitting on 22 March 2001 as a Chamber composed of

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

Having regard to the above application introduced on 7 January 1999 and registered on 16 March 1999,

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

Having deliberated, decides as follows:

THE FACTS

The applicant is a Greek national, born in 1925 and living in Athens.

A. The circumstances of the case

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

The applicant had inherited half a mine producing fluoride, which on 28 January 1985 was assessed by an inspector. On 30 April 1986 the applicant asked the Ministry of Industry not to declare that he had forfeited his rights over the mine. He claimed that the mine's production had dropped because its exploitation had provisionally become unprofitable.

On 17 July 1986 the Ministry of Industry declared that the applicant had forfeited his rights over the mine because the latter had remained idle during three years, between 1981 and 1983. During that period there was a crisis in the market as opposed to complete lack of demand for the mineral in question, as the applicant had claimed. The applicant was not given any compensation.

On 25 August 1986 the applicant lodged an appeal (προσφυγή) against the decision of the Ministry before the first-instance administrative court (Διοικητικό Πρωτοδικείο) of Athens. He alleged that the Ministry's decision did not contain adequate reasons. He pointed out in this connection that between 1981 and 1983 the mine was not idle. Its production had simply fallen because there was a crisis in the fluoride market. He also alleged that the inspector's report of 28 January 1985, on which the Ministry's decision was based, had not examined his claims. Finally, he alleged that the decision was unlawful because he should have been given an extra year in which to exploit the mine.

On 30 October 1987 the court rejected the appeal on the grounds that the mine had indeed remained idle, that it was up to the applicant to prove that there was a crisis in the market and that the fact that he had not been given an extra year was an irrelevant consideration under the relevant rules. This judgment was served on the applicant on 8 November 1998.

On 5 December 1988 the applicant appealed arguing, *inter alia*, that he had discovered that the report of 28 January 1985 was in his favour. A hearing was set down for 3 July 1990. On that date, on the applicant's request, the hearing was postponed for 22 November 1990.

On 14 December 1990 the Administrative Court of Appeal (Διοικητικό Εφετείο) of Athens ordered the production of a number of documents including the report of 28 January 1985. On 29 November 1991 it rejected

the appeal considering, *inter alia*, that the crisis in the relevant market could not justify the idleness of the mine, as the report of 28 January 1985 had wrongly accepted. The idleness could be justified only if there was no demand for the mineral in question whatsoever, a fact which the applicant did not prove. Finally, there was no obligation under the law for the authorities to grant the applicant an extra year. This judgment was served on the applicant on 21 July 1992.

On 17 August 1992 the applicant appealed in cassation. At first, the hearing was set down for 24 March 1993 but it was continuously postponed. The hearing was finally held on 4 December 1996.

On 13 July 1998 the Council of State rejected the appeal considering, *inter alia*, that it was up to the lower courts to assess the report of 28 January 1985.

B. Relevant domestic law

According to the Mining Code, minerals are owned by the State and may be assigned by the State to any person, in accordance with the provisions of the law. The main obligation of a mine owner is the exploitation of the mine (Articles 102 and s.). When the competent public service establishes that no exploitation or mining research is carried out in a mine in accordance with the provisions of the law, it forwards the pertinent particulars to the Mines Board which, after hearing the concerned parties, decides on the forfeiture of the right of ownership (Article 121).

COMPLAINTS

1. The applicant complains, under Article 6 § 1 of the Convention, about the length of the proceedings.

2. He also complains under the same provision about the fairness of the proceedings.

3. Finally, he complains, under Article 1 of Protocol No. 1, that his property rights over the mine have been violated.

THE LAW

1. The applicant complains about the length of the proceedings. He invokes Article 6 § 1 of the Convention which, insofar as relevant, reads as follows:

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

The Government submit that the case was a complex one and that the applicant had made two applications for the case to be adjourned.

The applicant replies that the two adjournments he asked for caused a delay of about twelve months which is insignificant compared with the total length of the proceedings.

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. This complaint should therefore be declared admissible.

2. Invoking Article 6 § 1 of the Convention, the applicant further complains that domestic law had been wrongly interpreted when it was decided that a simple crisis in the market could not justify the idleness of the mine, that the Council of State could not reassess the inspector's report, that the report did not constitute sufficient proof of the applicant's allegations and that an extra year need not have been granted.

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, among many other authorities, *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR-I).

In the present case, the Court notes that the applicant had the benefit of adversarial proceedings. At the various stages of those proceedings he was able to submit the arguments he considered relevant to his case. There is no evidence to suggest that the applicant was deprived of a fair trial within the meaning of Article 6 § 1 of the Convention.

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

3. The applicant finally complains that the "expropriation" of the mine was not in the public interest because the operation of the mine was unprofitable during the period in question. He invokes 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."

The Government first submit that the applicant has not exhausted domestic remedies. They claim that the applicant has failed to raise before the national courts, even in substance, the complaint relating to a violation of Article 1 of Protocol No. 1. He has only contested the well-foundedness of the administration's findings which led to the forfeiture of his rights over the mine.

Alternatively, the Government submit that the complaint is manifestly ill-founded.

The applicant replies that the State has failed to establish that a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of his property rights.

The Court does not consider it necessary to examine whether the applicant has exhausted domestic remedies, because this complaint is in any event inadmissible for the following reasons:

The Court notes that under Greek law property rights on mines can be assigned by the State to any person provided, *inter alia*, that productive researches are carried out in the mine. Otherwise, the law provides that the owner looses his rights over the mine.

Accordingly, the Court notes that in the present case the applicant had only a conditional right to property which he lost because he had not fulfilled his obligations under Greek law. Therefore, the Court considers that the applicant was not deprived of a possession. Hence, there is no appearance of a violation of 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.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint about the length of the proceedings;

Declares inadmissible the remainder of the application.

Erik FRIBERGH
Registrar

András BAKA
President

Commented [Note1]: Summarise the complaints without necessarily citing the invoked Convention Articles.

Commented [Note2]: Change if necessary.