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. 40428/98
by Stamatella ZOHIOU
against Greece

The European Court of Human Rights (Second Section), sitting on 23 March 2000 as a Chamber composed of

Mr M. Fischbach, *President*,
Mr C.L. Rozakis,
Mr G. Bonello,
Mrs V. Strážnická,
Mr P. Lorenzen,
Mr A.B. Baka,
Mr A. Kovler, *judges*,
and Mr E. Fribergh, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 19 November 1997 and registered on 25 March 1998,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court,

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 applicant,

Having deliberated, decides as follows:

**THE FACTS**

The applicant is a Greek national, born in 1949 and living in Corfu.

She is represented before the Court by Mr C. Chryssanthakis, a lawyer practising in Athens.

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

In 1970 the applicant's father donated her a plot of land. In April 1971 the applicant married Mr V.

On 14 December 1971 the 1970 donation was duly recorded in the appropriate public registry and the applicant became the owner of the plot of land in question.

The applicant and V stopped living together in 1980.

On 18 February 1983 Article 1400 of the Civil Code entered into force providing that, in case of divorce or of a separation lasting at least three years, either spouse could claim compensation for his or her contribution to the increase in the value of the other spouse's property during the marriage. According to Article 1400 § 3, donations were not to be taken into consideration when the increase in the value of the property was calculated.

On 26 August 1983 V sued the applicant before the multi-member first instance civil court (*polimeles protodikio*) of Corfou asking for a specific sum which he had invested during their marriage in the construction of a hotel on the plot of land that had been donated to the applicant in 1970. Initially, he relied on the provisions in the Civil Code concerning the administration of goods belonging to another person.

The applicant and V divorced on 25 June 1984.

On 3 April 1984 V lodged an additional memorial with the civil court invoking Article 1400 of the Civil Code in support of his action against the applicant.

On 7 June 1984 the civil court considered that V could not rely on Article 1400 of the Civil Code, which could not apply retroactively. However, it ordered the taking of evidence in respect of the remainder of V's claim. The court decided that each litigant could examine up to two witnesses, the examination of whom was to be completed within 60 days from the serving of the decision.

On 18 December 1984 V requested the court to hear witnesses. On 20 December 1984 the judge rapporteur decided that the witnesses would be examined on 4 March 1985. On that date V's first witness started being examined. His examination not having been concluded, the parties applied for an adjournment. The judge decided that the hearing would continue on 29 April 1985. She also decided that the taking of evidence was to be completed by the end of May 1985. On 29 April 1985 the examination of V's first witness continued but was not completed. Following an application by the parties for an adjournment, the judge decided that the hearing would continue on 1 July 1985 and that the taking of evidence would be completed by the end of July 1985. On 1 July 1985 the parties asked the judge to adjourn the hearing until 25 October 1985. The judge acceded to their request and decided that the taking

of evidence would be concluded by the end of October 1985. On 25 October 1995 both parties' lawyers were on strike and applied for an adjournment. The judge adjourned until 31 January 1986 and extended the period for the taking of evidence until the end of February 1986. The examination of V's first witness was concluded on 31 January 1986. The parties applied for an adjournment and the judge decided to continue the examination of witnesses on 21 March 1986 while extending the period for the taking of evidence until the end of March 1986. On 21 March 1986 the examination of the applicant's first witness commenced but was not concluded. The parties applied for an adjournment and the judge decided to continue the hearing on 30 May 1986 while extending the period for the taking of evidence until the end of June 1986. On 30 May 1986 the lawyers of both parties asked for an adjournment. The judge acceded to their request and fixed a new hearing for 18 July 1986. The period for the taking of evidence was extended until the end of July 1986. On 18 July 1986 a new judge continued but did not conclude the examination of the applicant's first witness. The parties applied for an adjournment. The judge decided that the hearing would resume on 14 November 1986. The relevant period was extended until December 1986. On 14 November 1986 both lawyers applied for an adjournment. The judge adjourned until 9 January 1987 and extended the period until the end of January 1987. The examination of the applicant's first witness was not completed on 9 January 1987 either. The parties applied for an adjournment. The judge decided that the hearing of the witness would be pursued on 20 February 1987 and extended the relevant period until the end of March 1987. On 20 February 1987 the lawyers applied for an adjournment. The judge adjourned until 10 April 1987 and extended the period until the end of April 1987. On 10 April 1987 the examination of the applicant's first witness was concluded and the parties applied for an adjournment. The judge fixed the date of the new hearing on 12 June 1987 and extended the relevant period until the end of June 1987. On 12 June 1987 the examination of V's second witness commenced but was not concluded. The parties applied for an adjournment. The judge adjourned until 23 September 1987 and extended the period until the end of October 1987. The examination of the witness was concluded on 23 September 1987. The hearing was adjourned on the application of the parties. The judge fixed a new date on 13 November 1987 and extended the period for the taking of the evidence until the end of that month. On 13 November 1987 and 18 January 1988 the parties' lawyers requested and obtained adjournments. The period for the examination of witnesses was also extended. On 8 February 1988 the judge started examining the applicant's second witness. The examination not having been concluded on that date the parties applied for an adjournment. The judge adjourned until 21 March 1988 and extended the period until the end of April 1988. On 21 March 1988 the lawyers applied for an adjournment. The judge adjourned until 2 May 1988 and extended the period until the end of that month. The examination of the applicant's second witness was concluded on 2 May 1988.

On 30 October 1988 V requested the court to fix a hearing. The hearing was fixed for 4 April 1989.

V, relying on Law No. 1649/86 about the retroactive application of Article 1400 in certain cases, asked for further evidence-taking measures.

On 30 June 1989 the civil court ordered such measures considering that Article 1400 could be in principle applied in the circumstances of the case. As a result, the court cancelled its previous order about taking of evidence. According to the new order, each side could examine up to three witnesses and evidence-taking was to be concluded in ninety days from the serving of the decision.

The judge rapporteur decided that the examination of witness should start on 13 November 1989. On that date, however, the lawyers of both parties asked for an adjournment and the judge fixed a new date for 27 November 1989. On that date V's first witness started being examined. The examination was not completed and the judge adjourned the hearing until 18 December 1989. The period for the examination of witnesses was extended at the request of the parties until the end of January 1990. On 18 December 1989 the examination of the first witness was not completed and the hearing was adjourned until 22 January 1990. On that date a further adjournment was ordered for the same reason until 5 February 1990. The period for the taking of evidence was extended at the request of the parties until the end of April 1990. On 5 February 1990 there was no hearing and the judge adjourned until 19 March 1990. On that date the examination of V's first witnesses was concluded. The judge adjourned until 30 April 1990. On that date the lawyers of both parties asked for an adjournment. The parties asked for a further adjournment on 11 June 1990. The hearing was resumed on 17 September 1990 with the examination of the applicant's first witness. The examination not having been concluded, the parties applied for an adjournment. The judge adjourned until 1 October 1990. On that date the examination of the applicant's first witness was concluded and the judge adjourned until 5 November 1990. On that date V's second witness started being examined. The examination was not concluded and the judge adjourned until 26 November 1990. On that date the examination of V's second witness was terminated and the judge adjourned until 14 January 1991. At the request of the parties she extended the period for the taking of evidence until the end of February 1991. On 14 January 1991 both parties applied for an adjournment and the judge adjourned until 25 February 1991. On that date the applicant's second witness started being examined. His examination was not concluded and the judge adjourned until 15 April 1991. At the request of the parties the judge decided to extend the period for the taking of evidence until the end of June 1991. On 15 April 1991 the examination of the applicant's second witness was concluded. The judge adjourned until 20 May 1991. On that date the parties applied for an adjournment. The judge adjourned until 24 June 1991 and extended the period for the taking of evidence until the end of October 1991. On 24 June 1991 there was a further adjournment until 14 October 1991. On that date V's third witness started being examined. His examination was not concluded and the judge adjourned until 27 January 1992. Both parties consented to the extension of the period for the taking of evidence until the end of March 1992. On 27 January 1992 the applicant's lawyer did not appear. V's lawyer applied for an adjournment. The judge adjourned until 23 March 1992. On that date the examination of the applicant's third witness commenced but was not concluded. The judge adjourned until 11 May 1992. The period for the taking of evidence was extended with the parties' consent until the end of June 1992. On 11 May 1992 the examination of the applicant's third witness continued and was again not concluded. The judge adjourned until 22 June 1992. On that date the parties applied for an adjournment. The judge adjourned until 5 October 1992 when the examination of the same witness continued. However, it was not concluded on that date either and the judge adjourned until 9 November 1992. On that date both parties applied for an adjournment. The judge adjourned until 21 December 1992 and extended the relevant period until the end of the same month. On 21 December 1992 the parties applied for another adjournment. The judge adjourned until 14 June 1993 and extended the period until the end of the same month. The examination of the applicant's third witness was concluded on 5 July 1993.

On 6 July 1993 V asked the court to fix a hearing for the examination of his action. There was such a hearing on 16 November 1993.

On 31 January 1994 the civil court, applying Article 1400 of the Civil Code, considered that the applicant had to pay V 28,822,769 drachmas plus interest as from the serving of the writ of the initial action. In so far as Article 1400 § 3 was concerned, the court considered that the plot of land on which the hotel had been built had been donated to the applicant prior to her wedding.

On 23 March 1994 the applicant appealed.

On 6 September 1994 V seized the applicant's flat.

On 22 December 1994 the applicant lodged additional grounds of appeal. The appeal was heard on 22 September 1995.

The applicant's appeal was rejected by the Court of Appeal (*Efetio*) of Corfou on 12 January 1996 which upheld the manner in which the civil court had calculated V's compensation. In its calculations the appeal court used as a basis the value that the hotel had in August 1983, when the applicant and V had completed three years of living apart, and subtracted therefrom the value that the plot of land had when it had been donated to the applicant.

On 2 July 1996 the applicant appealed in cassation. There was a hearing on 14 May 1995.

On 18 June 1997 the Court of Cassation (*Arios Pagos*) rejected the appeal in cassation considering, *inter alia*, that the court of appeal had applied Article 1400 § 3 of the Civil Code correctly because it had not taken into consideration the increase in the applicant's property which was the result of a donation having subtracted from the value of the hotel the original value of the plot of land.

## COMPLAINTS

1. The applicant complains under Articles 6 § 1 of the Convention of the length of the proceedings. She also complains under Article 13 of the Convention because the proceedings in question, because of their length, could not provide effective judicial protection.

2. She also complains under Article 1 of Protocol No. 1 of the outcome of the proceedings. In particular, she claims that she has to pay V 220,000,000 drachmas while the real value of the hotel is 100,000,000 drachmas. Moreover, she claims that the courts refused to take into consideration the fact that the plot of land on which the hotel had been built was donated to her after her wedding and, as a result, Article 1400 of the Civil Code did not apply.

## PROCEDURE

The application was introduced on 19 November 1997 and registered on 25 March 1998.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

On 29 June 1999 the Court decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 11 November 1999, after an extension of the time-limit fixed for that purpose. The applicant replied on 10 January 2000.

On 5 February 2000 the Government submitted additional observations.

**THE LAW**

1. The applicant complains under Articles 6 § 1 of the Convention of the length of the proceedings.

Article 6 § 1 of the Convention provides as follows:

> "In the determination of his civil rights and obligations …, everyone is entitled to a … hearing within a reasonable time …".

The Government argue that the Court can only take into consideration the proceedings after 19 November 1985, which is the date figuring in Greece's declaration concerning the individual right of petition. On the substance of the complaint, the Government submit that a serious matter was at stake in the proceedings in question. Moreover, according to domestic law, the parties retain full and exclusive responsibility for all procedural steps of civil proceedings. There was a lot of inertia on the part of both V and the applicant. The parties were specially responsible for the delays in the taking of evidence. The court tried to respond to the parties' procrastination by fixing very short time-limits, which, however, the parties did not respect.

The applicant points out that the proceedings were rather simple. In her view, no consideration can justify proceedings of such a length. In any event, she submits that domestic rules concerning the role of the parties in civil proceedings cannot absolve the authorities from their overall responsibility under the Convention to ensure respect for the right to a hearing within a reasonable time.

The Court notes that it is not disputed between the parties that Article 6 § 1 of the Convention applied to the proceedings in question which, the Court considers, involved a determination of the applicant's civil rights and obligations within the meaning of this provision.

Moreover, the Court considers that the period it is competent *ratione temporis* to examine began on 20 November 1985 when the recognition by Greece of the right of individual petition took effect.

In the light of the parties' observations, the Court considers that the part of the application that concerns the length of the proceedings after 19 November 1985 raises serious questions of fact and law, which are of such a complexity that their determination should depend on an examination on the merits. It cannot, therefore, be considered manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established.

2. The applicant also complains that the length of the proceedings in question was such that they could not afford her an effective remedy under Article 13 of the Convention.

Article 13 of the Convention provides as follows:

> "Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court considers that the applicant does not argue that she instituted the proceedings in question in order to obtain redress in respect of an arguable claim that one of her Convention rights had been violated. It follows that no appearance of a violation of Article 13 of the Convention is disclosed.

This part of the application must be, therefore, rejected as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

3. Finally, the applicant complains under Article 1 of Protocol No. 1 of the outcome of the proceedings.

Article 1 of Protocol No. 1 provides 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 Court recalls that, according to the case-law of the Convention organs, there is no interference with the right to peaceful enjoyment of possessions when, pursuant to a pre-existing law, a court orders one individual party to a civil-law relationship to pay compensation to another (No. 9776/82, Dec. 3.10.83, D.R. 34, p. 153).

The Court notes that the proceedings in question concerned a dispute between individuals, which was decided by the courts according to the law in force at the time. It also notes that the applicant does not complain of Law No. 1649/86 rendering the application of Article 1400 of the Civil Code retroactive in certain cases. The applicant simply complains about the size of the sum awarded against her and the manner in which the courts interpreted the third paragraph of Article 1400. The Court, however, considers that these aspects of the case cannot give rise to an interference with the right guaranteed in Article 1 of Protocol No. 1.

This part of the application must, therefore, be rejected as manifestly ill-founded 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 concerning the length of the proceedings after 19 November 1985;

**DECLARES INADMISSIBLE** the remainder of the application.

Erik Fribergh
Registrar

Marc Fischbach
President