FIRST SECTION

CASE OF KATSOULIS AND OTHERS v. GREECE

(Application no. 66742/01)

JUDGMENT

(Just satisfaction)

STRASBOURG

24 November 2005

FINAL

24/02/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Katsoulis **and Others** v**.** Greece**,**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr P. Lorenzen, *President*,
Mr C.L. Rozakis,
Mrs F. Tulkens,
Mrs N. Vajić,
Mrs S. Botoucharova,
Mr A. Kovler,
Mr K. Hajiyev, *judges*,
and Mr S. Nielsen, *Section Registrar*,

Having deliberated in private on 3 November 2005,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 66742/01) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by thirty-nine Greek nationals ("the applicants"), whose names appear in the list annexed hereto, on 6 December 2000.

2. In a judgment delivered on 8 July 2004 ("the principal judgment"), the Court held unanimously that there had been a violation of Article 1 of Protocol No. 1. More specifically, it held that no reasonable balance had been struck between the public interest and the requirements of the protection of the applicants' rights. The Court also held unanimously that there had been a violation of Article 6 of the Convention as regards the length of the proceedings (see ***Katsoulis*** *and Others* ***v. Greece***, no. 66742/01, §§ 35 and 42, 8 July 2004).

3. Under Article 41 of the Convention the applicants sought just satisfaction of several million euros for damage sustained and costs and expenses.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicants to submit, within six months from the date on which the principal judgment would become final, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid*., § 48, and point 3 of the operative provisions).

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section.

6. The Government filed their observations on the applicants' claims for just satisfaction on 30 March 2005. On 6 July 2005 the President of the Chamber concerned refused to include in the case file the applicants' observations in reply of 7 June 2005, filed outside the time-limit (Rule 38 § 1).

THE LAW

I. PRELIMINARY REMARK

7. On 7 June 2005 the applicants' lawyers informed the Court that Mr Michail Tourasoglou, who had continued the proceedings in his late sister's stead (applicant no. 21), died intestate on 3 December 2004; they invited the Court not to continue the examination of the application in this respect.

8. In these circumstances, the Court concludes, in accordance with Article 37 § 1 (c) of the Convention, that it is no longer justified to continue the examination of the application in so far as it was introduced by applicant no. 21. Furthermore, the Court finds no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the further examination of that part of the application by virtue of that Article.

9. Accordingly, in so far as it was introduced by applicant no. 21, the case should be struck out of the list.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

10. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

1. The applicants' submissions

11. The applicants claimed 3,396,010 euros (EUR) for pecuniary damage. This amount was based on an expert valuation carried out in June 2003 by two civil engineers appointed by the applicants to assess the value of all the disputed plots. The experts based the assessment on the market value of the neighbouring properties and on a judgment of the Athens Court of Appeal which determined the amount per square metre for the compensation of a property in the same vicinity expropriated for the purposes of the Olympic Games in 2004. According to that judgment (no. 6622/2002), the price of plots of land adjacent to the applicants' properties was set at EUR 450 per square metre.

2. The Government's submissions

12. The Government submitted that the applicants had no right to compensation: on the one hand, they had not been recognised by the civil courts as the owners of the disputed plots and, on the other hand, the decision to reforest did not prohibit all use of the land but only use that would hinder reforestation and would be inconsistent with the forest character of these plots. Moreover, the Government reiterated that they contested the exact location and surface area of the plots.

13. As a conclusion, the Government argued that there was no causal link between the violation found and the pecuniary loss claimed by the applicants. Therefore, they considered that the finding of a violation of Article 1 of Protocol No. 1 constituted sufficient just satisfaction. In the alternative, they submitted that any award should not exceed EUR 70,000.

3. The Court's assessment

14. The Court reiterates that, where it has found a breach of the Convention in a judgment, the respondent State is under a legal obligation to put an end to that breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Iatridis* ***v. Greece*** (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI).

15. The respondent Government are, in principle, free to choose the means whereby they will comply with the judgment. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the breach allows for *restitutio in integrum*, it is for the respondent Government to effect it, the Court having neither the power nor the practical possibility of doing so itself. However, if national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Papamichalopoulos and Others* ***v. Greece*** (Article 50), judgment of 31 October 1995, Series A no. 330-B, pp. 58-59, § 34, and *Brumărescu* ***v.*** *Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I).

16. In its principal judgment the Court held *inter alia* that "(...) the prefect's decision of 6 September 1994 was based on decision no. 108424/1934 of the Minister of Agriculture. In the Court's opinion, the authorities were at fault for ordering such a serious measure that affected the position of the applicants and a number of other persons who claimed property rights over the land without a fresh reassessment of the situation as depicted in decision no. 108424/1934. However, the Supreme Administrative Court rejected the applicants' application on the sole ground that the prefect's decision was not operative, since it simply confirmed the decision that had been issued by the Minister of Agriculture in 1934. Such a manner of proceeding in such a complex situation in which any administrative decision could weigh heavily on the property rights of a large number of people cannot be considered consistent with the right enshrined in Article 1 of Protocol No. 1 and does not provide adequate protection to people such as the applicants who *bona fide* possess or own property, in particular, when it is borne in mind that there is no

possibility of obtaining compensation under Greek law. The Court considers that the situation of which the applicants complain comes within the first sentence of the first paragraph of Article 1 of Protocol No. 1 and that there was no reasonable balance struck between the public interest and the requirements of the protection of the applicants' rights" (see ***Katsoulis*** *and Others* ***v. Greece***, cited above, §§ 34-35).

17. The Court first considers that, in the circumstances of the case, the nature of the breach found in the principal judgment does not allow the Court to proceed on the basis of the principle of *restitutio in integrum* (see *Former King of* ***Greece*** *and Others* ***v. Greece*** [GC] (just satisfaction), no. 25701/94, § 73, 28 November 2002). Accordingly, in the present case it is for the Court to determine the financial compensation to be awarded as just satisfaction.

18. Secondly, the Court notes that the question of the ownership status of the disputed plots has not yet been definitively resolved by the Greek courts. However, in its principal judgment the Court accepted that the applicants could be regarded as the owners of the land in issue or at least as having an interest that would normally be protected by Article 1 of Protocol No. 1 "for the purposes of the proceedings before the Court" (*ibid,* § 32).

19. Finally, the Court notes that the applicants have not been deprived of their property. In effect, the decision to reforest will only limit the use of these properties. The Court found a violation of Article 1 of Protocol No. 1 on the ground that the applicants' arguments that their land could not be considered as forest land had not been given adequate consideration. As a result, the applicants are now unable to receive any compensation for the loss they may suffer from the reforestation.

20. Thus, in calculating the pecuniary damage, the Court should take into account that the act of reforestation of the disputed plots constituted a limitation of their use which, inevitably, would result in a considerable loss of earnings. The Court reiterates that it is not its task to calculate in detail the loss of income caused by the act of reforestation (see *Papastavrou and Others* ***v. Greece*** (just satisfaction), no. 46372/99, § 15, 18 November 2004). Further, in the present case, the Court is aware of the difficulties in calculating the value of the property and the pecuniary damages due to the limitation of its use. It also notes the considerable disparity between the parties' estimates.

21. Nevertheless, the Court cannot overlook the fact that the applicants suffered a drastic limitation of their property's use which, in addition, they could not challenge before the domestic courts due to the Supreme Administrative Court's position. The Court reiterates that the applicants had submitted a request under relevant domestic law to have their properties purchased by the State but the authorities have never replied (see ***Katsoulis*** *and Others* ***v. Greece,*** cited above, § 12). Accordingly, in the present case the applicants were refused any compensation for the deprivation of any commercial exploitation of the disputed plots, whereas compensation was paid in respect of other adjacent plots which were expropriated for constructing premises for the purposes of holding the Olympic Games in 2004 (see *Papastavrou and Others* ***v. Greece*** (just satisfaction), *ibid*., § 16).

22. In view of all the above considerations, the Court awards the applicants jointly on an equitable basis, as required by Article 41 of the Convention, EUR 380,000 under the head of pecuniary damage, plus any tax that may be chargeable on this amount.

B. Non-pecuniary damage

23. As regards non-pecuniary damage the applicants submitted that the interference of the State with their properties had caused them distress and anxiety and that the predicament in which they had found themselves was quite serious, as most of them had purchased the properties at a very high cost at the time with limited resources. However, they affirmed that a judgment of the Court holding that there has been a violation of their rights under the Convention would constitute sufficient just satisfaction and claimed token compensation of one euro.

24. The Government did not submit any specific observations under this head.

25. The Court considers that while the applicants may have sustained non-pecuniary damage, the principal judgment provides sufficient compensation for it.

C. Costs and expenses

26. As regards costs and expenses for the proceedings before the Supreme Administrative Court, the applicants claimed EUR 587 per expropriated plot, namely a total of EUR 18,684. As to the proceedings before the Court, the applicants underlined the complexity of the case and the fact that they needed two lawyers, who had spent 380 hours working on the file at an hourly rate of EUR 145 (total: EUR 57,000). To that sum should be added an amount of EUR 2,000 for various secretarial expenses. Lastly, they claimed EUR 1,416 for the fees of the civil engineers who had assessed the value of their properties.

27. The Government submitted that the applicants' claims for costs and expenses were not supported by any proof. They further argued that the experts' valuation did not relate to the violation found. In any event, they considered that any award in respect of costs and expenses incurred in the Court proceedings should not exceed EUR 3,000.

28. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and were also reasonable as to quantum (see *Iatridis* ***v.*** ***Greece*** (just satisfaction), op. cit., § 54). Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see *Beyeler* ***v.*** *Italy* (just satisfaction) [GC], no. 33202/96, § 27, 28 May 2002).

29. In the present case, the Court notes that the applicants' claims were not supported by any voucher or bill of costs on the basis of which the Court can assess precisely the cost and expenses actually incurred.

30. Regard being had to the above-mentioned criteria, the Court considers it reasonable to reject the applicants' claims under this head.

D. Default interest

31. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list in so far as it was introduced by applicant no. 21;

2. *Holds*

   (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 380,000 (three hundred and eighty thousand euros) in respect of pecuniary damage, plus any tax that may be chargeable;

   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Peer Lorenzen
Registrar President

List of applicants

1. Tryphon **KATSOULIS**
2. Aphroditi KOUTSOUGERA
3. Leonidas VOUDOURIS
4. Philippos DAOUSANIS
5. Maria DAOUSANI
6. Konstantinos PIERROS (the applicant died on 18 July 2002; the proceedings are continued by his heirs, namely his son, Nikolaos Pierros, and his daughter, Georgia Pierrou)
7. Irini TSOKA
8. Konstantinos TSOKAS
9. Leonidas ZIMIANITIS
10. Stavroula TZATHA
11. Spyridoula TZATHA
12. Evgenia CHALKIA
13. Eleni KOTSIA
14. Vassilios DOGANIS
15. Asimakis DOGANIS
16. Eleftheria PAPADOPOULOU
17. Georgia POLENTA
18. Panagiota BALANTINOU
19. Maria PERVOLARAKI
20. Sophia PYRGIANOU

21. Georgia TOURASOGLOU (the applicant died on 6 June 2002; the proceedings were continued by her brother and heir, Michail Tourasoglou)

22. Kyriakos FRILIGGOS

23. Triantafyllia FRILLIGOU

24. Ioannis KAKAVAS

25. Aggeliki KOUTSOGIANNI

26. Konstantinos PAPADIMITRIOU

27. Eleni TSILIGIANNI

28. Evaggelos PAPAMAVROUDIS

29. Maria GIAKOUMAKI

30. Eleni KARRA

31. Païkos KARRAS

32. Anna KARMOGIANNI

33. Alexandra THOMA

34. Aikaterini THOMA

35. Panagiota VLAMI

36. Christos ZERVAS

37. Maria ZERVA

38. Nikolaos MARALETOS

39. Eleni NIKOLI

KATSOULIS AND OTHERS **v**. **GREECE** (JUST SATISFACTION) JUDGMENT