



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

AFFAIRE LES SAINTS MONASTERES c. GRECE

CASE OF THE HOLY MONASTERIES v. GREECE

(ARTICLE 50)

(10/1993/405/483–484)

ARRET/JUDGMENT

STRASBOURG

1^{er} septembre/1 September 1997

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THE HOLY MONASTERIES JUDGMENT OF 1 SEPTEMBER 1997

(ARTICLE 50)

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SUMMARY¹

Judgment delivered by a Chamber

Greece – claim for just satisfaction by applicant monasteries that had been held in earlier judgment to be victims of a breach of Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention

RULE 54 § 4 OF RULES OF COURT A

Friendly settlement reached between Greece and applicant monasteries – found to be equitable.

Conclusion: case ordered to be struck out of the list (unanimously).

COURT'S CASE-LAW REFERRED TO

9.12.1994, The Holy Monasteries v. Greece

1. This summary by the registry does not bind the Court.

In the case of The Holy Monasteries v. Greece¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr B. WALSH,

Mr A. SPIELMANN,

Mr N. VALTICOS,

Mrs E. PALM,

Mr I. FOIGHEL,

Mr A.N. LOIZOU,

Mr A.B. BAKA,

Mr L. WILDHABER,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 26 August 1997,

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

PROCEDURE AND FACTS

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 7 April 1993, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in two applications (nos. 13092/87 and 13984/88) against the Hellenic Republic lodged with the Commission under Article 25 by eight Greek Orthodox monasteries, Ano Xenia, Ossios Loukas, Agia Lavra Kalavriton, Metamorphosis Sotiros, Asomaton Petraki, Chryssoleontissa Eginis, Phlamourion Volou and Mega Spileo Kalavriton, on 16 July 1987 and 15 May 1988.

Notes by the Registrar

1. The case is numbered 10/1993/405/483–484. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The third number indicates the case's position on the list of cases referred to the Court since its creation and the last two numbers indicate its position on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In a judgment of 9 December 1994 (“the principal judgment”, Series A no. 301-A), the Court held that by imposing a considerable burden on certain of the applicant monasteries deprived of their property (Ano Xenia, Agia Lavra Kalavriton, Metamorphosis Sotiros, Chryssoleontissa Eginis and Mega Spileo Kalavriton) and by preventing them from bringing before the appropriate courts any complaint they might make against the Greek State, third parties or the Greek Church itself or even intervening in such proceedings, Law no. 1700/1987 contravened Article 1 of Protocol No. 1 and Article 6 of the Convention respectively. The Court also held that there was no breach of Articles 9, 11 and 13 of the Convention and that it was not necessary to consider the case under Article 14 taken together with Articles 6 § 1, 9 and 11 of the Convention and Article 1 of Protocol No. 1 (*ibid.*, pp. 35 and 37–40, §§ 75, 83, 88, 90 and 94, and points 2–8 of the operative provisions). Lastly, it awarded the applicant monasteries a specified sum for costs and expenses (*ibid.*, p. 41, § 104, and point 9 of the operative provisions).

3. As the question of the application of Article 50 was not ready for decision in respect of pecuniary damage, the Court reserved it and invited the Greek Government (“the Government”) and the applicant monasteries not parties to the agreement of 11 May 1988 to submit, within six months, their observations on the matter and, in particular, to notify the Court of any agreement they might reach (*ibid.*, p. 40, § 100, and point 10 of the operative provisions).

4. On 5 June 1995 the Government requested a six-month extension of time in order to reach a friendly settlement. Counsel for the monasteries stated that he did not oppose this, “as a sign of goodwill and trusting that the efforts of the administration and the Government [would] continue [in] the right direction”. The President, Mr R. Ryssdal, granted the extension in a letter of 13 June 1995, stressing, however, that the extension was wholly exceptional and that he wished to be informed of the progress of the negotiations during the relevant period.

5. On 14 December 1995 the Agent of the Government sent the Registrar the text of a draft amendment to Law no. 1700/1987, drafted “with a view to rendering the national legal order consistent with the judgment of [the] Court”; the draft was to be submitted to Parliament, for approval, by 15 January 1996 at the latest. To that end he sought a fresh extension of time until 30 January 1996, and this was granted on 2 January 1996.

In a letter of 29 January 1996 the Agent of the Government informed the President that it was impossible to meet the deadline previously imposed because of the recent change of government in Greece and the consequent temporary suspension of Parliament’s legislative work. On 14 March 1996 he wrote again to say that the draft amendment had been approved by the relevant ministers and had been sent to Parliament. He requested an

extension of time until 15 May 1996 and subsequently, in a letter of 14 May, until 31 May. On that date he informed the Court that the law including the amendment in question had just been passed.

6. On 28 June 1996 the Registrar received from the Agent of the Government the following letter, to which was annexed the Greek text of section 55 of Law no. 2413/1996:

“With reference to your letter dated 24 June 1996, I have the honour to inform you that the amendments to Laws nos. 1811/1988 and 1700/1987 have been introduced in Law no. 2413/1996, which was ratified and published in the Official Gazette on 17 June 1996 (issue 124A, [a] copy of which [is] attached). [In brief, section] 55 of the above Law ... provides that:

1. Monasteries not parties to the agreement of 11 May 1988 have the right to protect their rights and interest[s] with respect to all their real property now covered by Laws nos. 1700/1987 and 1811/1988, before Greek courts, utilising any and all applicable legal provisions and [types] of [evidence] available to them under Greek law before the issuance of Laws nos. 1700/1987 and 1811/1988.

2. Any and all administrative acts or circulars issued in the past pursuant to Laws nos. 1700/1987 and 1811/1988 regarding the aforementioned monasteries are [revoked] and considered null and void from the day of their issuance.

3. All contrary substantive or procedural provisions are repealed as regards the aforementioned monasteries.

The above provisions bring the domestic law into compliance with the Court’s decision in the present case.

It must be noted that [owing to] the unexpected events of the last few days in Greece (death of the former Prime Minister) which led to the exceptional public holiday of 26 June 1996, the services of the Ministry of Education and Religious Affairs have not been able to contact the representative of the monasteries in order to be informed of his position in respect of the adopted regulations.

Nevertheless I would like to refer to my letter dated 14 March 1996 in which [it] was stated that the latter had orally expressed his consent as regards the content of the amendments envisaged at that time.”

Following receipt of this letter the Registrar invited the applicant monasteries to inform him by 10 October 1996 whether a friendly settlement had been concluded in the case and, if not, to lodge, by the same date, any submissions they might wish to make on the application of Article 50 of the Convention.

7. On 7 October 1996 counsel for the applicant monasteries replied as follows:

“... ”

The enactment of section 55 of Law no. 2413/1996 is the outcome of the efforts of high government officials who were advocating prompt compliance [with] the European Court’s judgment on an issue that might have raised a political controversy. The Legal Council of the Greek State was equally supportive of the efforts to reach an amicable settlement.

The enactment of section 55 of Law no. 2413/1996 [has] resolved all issues pertaining to the rights of the Holy Monasteries under Article 6 of the European Convention, but [the provision] is unclear on the [restoration] of the Holy [Monasteries’] rights under Article 1 of Protocol No. 1. Section 55 (1) provides: ‘The proof of the [Holy Monasteries’] rights *in rem* [over] the above property [and of their use (*nomi*) of it may be] effected by all [types] of [evidence] authorised under the relevant provisions of the Code of Civil Procedure, [subject to] the provisions which were in force before the enactment of Laws nos. 1700/1987 and 1811/1988 regarding the acquisition of [use and] rights *in rem* against the Greek State.’

Such a provision casts doubt on the [restoration in law] of ... the *status quo ante* with regard to [the Holy Monasteries’] rights and may lead to legal disputes regarding rights of the Holy Monasteries [over] land owned and possessed by them for centuries.

In view of the above, the Holy Monasteries have requested a clarification of the provisions of section 55 either by means of an interpretative legal provision or by means of an opinion of the Legal Council of the Greek State, [a request] which was not further explored in view of the recent general election.

The Holy Monasteries acknowledge the substantial progress that [has been] made in reaching an amicable settlement and consider that it would be unfair to request the initiation of an Article 50 procedure.

The Holy Monasteries submit to the European Court that the amicable settlement procedure be extended until the end of December 1996, [by which date] they expect this important issue regarding the interpretation of the above provision to have been resolved.”

On 16 October 1996 the President acceded to the monasteries' request and granted an extension of time until 20 December 1996.

8. In a letter of 23 December the Agent of the Government wrote:

“... I write to inform you that the relevant department of the Ministry of Education and Religious Affairs has notified me that the question raised by the applicants regarding the restoration under the new Law no. 2413/1996 of their rights over the land in issue, protected by Article 1 of Protocol No. 1, is being studied with a view to its being settled in a manner satisfactory to the applicants.

It would, however, seem impossible in practice to effect a legislative reform for that purpose by the end of the year as the relevant ministers, in order to be able to sign the interpretative provisions, will have to be briefed on the case from its beginnings following the recent parliamentary elections and the ensuing ministerial changes.

Consequently, I would ask you to kindly grant a further five months to reach a friendly settlement in this case.”

This request was not opposed by counsel for the monasteries and the President accordingly granted a fourth extension of time until 6 June 1997, stating, however, that he would not be prepared to grant any further extensions.

9. In a letter of 4 June 1997 the Agent of the Government made the following application to the Court, seeking to have the case struck out of its list:

“I write to inform you that the Greek Government and the applicants have reached a friendly settlement in the above-mentioned case.

More particularly, by means of Opinion no. 275/19-5-97 of the First Section of the Legal Council of State, duly approved by the Minister of Education and Religious Affairs on 2 June 1997, section 55 of Law no. 2413/1996 has been interpreted in a manner that leaves no doubt as to the Holy Monasteries’ ownership of the land of theirs in issue.

The applicants’ representative has indicated his consent to the manner in which this case has been resolved.

Consequently, I would ask you to kindly strike this case out of the Court’s list.

...”

The Legal Council of State's opinion, approved by the Minister of Education and Religious Affairs, was annexed to the application, and the relevant passages read as follows:

“The State undertook ... to clarify by 6 June 1997 certain issues [arising from] the second part of subsection (1) of section 55, relating to the evidence ... of the Holy [Monasteries’ property rights] and the recognition of the [position] before Law no. 1700/1987 [came] into force. The following questions are posed:

(a) Is the interpretation that the property rights of the above Holy Monasteries [*vis-à-vis*] all third parties are ... restored [in law] and [that] they return to [what they were] before Law no. 1700/1987 [came] into force, consistent with the letter and spirit of section 55 of Law no. 2413/1996?

(b) Is the interpretation that the provisions applicable before Law no. 1700/1987 [came] into force are also applicable concerning the acquisition of [use] and rights *in rem* of the Holy Monasteries [*vis-à-vis*] the State consistent with the letter and spirit of section 55 of Law no. 2413/1996?

(c) Does the above interpretation of section 55 of Law no. 2413/1996 [serve] the interests of the State?

In accordance with the [explanatory memorandum to] the amendment, the above provision ‘better harmonises the domestic law on monastery property with the [requirements] of Article 6 of the European Convention on Human Rights and Fundamental Freedoms and Article 1 of Protocol No. 1, ratified by Legislative Decree no. 53/1974 (A 256)’.

In view of the above [and of] the [operative provisions] and [reasoning] of the [judgment] of the European Court concerning the fact that the provisions of Laws nos. 1700/1987 and 1811/1988 are contrary to Article 6 § 1 of the European Convention and Article 1 of Protocol No. 1 [in respect of] the Holy Monasteries that applied to the said court which were not parties to the [agreement] dated 11 May 1988, the following are noted in response to questions (a) and (b) ...:

In the opinion of the Legal Council of State (Section A), the enactment of ... section 55 of Law no. 2413/1996 definit[iv]ely cancels the application of the ... above laws to the extent that they were considered contrary to the [Convention in respect of] these monasteries, [which], therefore, return and are restored to [their position] before Law no. 1700/1987 [came] into force.

In particular, the first part of subsection (1) of the said provision expressly stipulates that the Holy Monasteries that were not parties to the [agreement] dated 11 May 1988 between the Greek State and the Permanent Holy Synod of the Church of Greece, nor became parties thereafter, may be parties to [court proceedings] and are [given legal capacity to bring or defend] proceedings concerning their rights [over the land of theirs] seized by Laws nos. 1700/1987 and 1811/1988. This enables the Holy Monasteries again to [assert] and defend their rights [over the land covered] by these provisions, against any third party including the Greek State, [a possibility] of which they were deprived by the provisions of Law no. 1700/1987.

The second part of the same subsection (1) expressly [provides] that [proof] of the rights *in rem* and [use] of the said property by the Holy Monasteries may be [adduced] using any [type] of evidence provided for by civil procedure, without prejudice to the provisions applicable before Laws nos. 1700/1987 and 1811/1988 concerning the acquisition of [use] and rights *in rem* against the Greek State.

Therefore, in accordance with the above, there is no longer an issue [concerning the] validity of the presumption established by section 3 (1) (A) of Law no. 1700/1987 in favour of the Greek State, which can no longer operate since the condition [for] its operation was [a] restriction of [the types] of evidence [on which] the Holy Monasteries [could rely] against the State; those [types] of evidence are restored to [what they were] before the enactment of the Law.

With the enactment of ... section 55 of Law no. 2413/1996, the contested provisions of Laws nos. 1700/1987 and 1811/1988 [cease to be] valid for the Holy Monasteries; this is also [to be inferred from] subsection (2) of the same provision, which revokes in law all administrative acts, circulars, etc. that were issued [pursuant to] Laws nos. 1700/1987 and 1811/1988 and [from] subsection (3), which [provides] that ‘any contrary procedural or substanti[ve] provision [is repealed as regards] the Holy Monasteries [referred to in] subsection (1) hereof’.

Concerning ... question ... (c), in view of the [explanatory memorandum to] the provision, [which states] that it was enacted for the better harmonisation of the domestic law with Article 6 § 1 of the European Convention on Human Rights and Article 1 of Protocol No. 1, in compliance with the [judgment of] the European Court, [pursuant to] an obligation undertaken by an international convention, in order to put an end to the dispute with the Holy Monasteries that [had] applied to the said court and to prevent similar disputes in future that might result in sanctions against the Greek State and in other adverse consequences, it is self-evident that ... section 55 of Law no. 2413/1996, in the above sense, does serve the public interest.

Therefore, in view of the above, the [replies] to ... questions ... (a), (b) and (c) [are in the] affirmative.”

10. On 23 June 1997 counsel for the monasteries informed the Court that the monasteries agreed to the case's being struck out of the list.

11. On 3 July the Delegate of the Commission made it known that he had no objection to the application of Rule 49 § 2 of Rules of Court A.

AS TO THE LAW

12. Since its principal judgment of 9 December 1994 the Court has been informed of a friendly settlement that the Government and the applicant monasteries not parties to the agreement of 11 May 1988 have concluded as to those monasteries' claims under Article 50 of the Convention and which was confirmed by the passing of Law no. 2413/1996 and the adoption of the Legal Council of State's opinion of 19 May 1996 (see paragraphs 6 and 9 above).

Having regard to the foregoing Law and opinion and also to the absence of any objections on the part of the Delegate of the Commission, the Court finds that the agreement is equitable as required by Rule 54 § 4 of Rules of Court A. It consequently takes formal note of it and considers that it is appropriate to strike the case out of the list under that Rule.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing under Rule 55 § 2,
second sub-paragraph, of Rules of Court A on 1 September 1997.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar