CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF KYRTATOS v. GREECE

(Application no. 41666/98)

JUDGMENT

STRASBOURG

22 May 2003

FINAL

22/08/2003

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 Kyrtatos v. Greece,

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

Mrs F. TULKENS, *President*,
Mr C.L. ROZAKIS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 23 January 2003 and on 29 April 2003,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 41666/98) against the Hellenic Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Greek nationals, Mrs Sofia Kyrtatou and Mr Nikos Kyrtatos ("the applicants"), on 19 June 1996.

2. The applicants, who had been granted legal aid, complained, under Article 6 § 1 and Article 8 of the Convention, about the failure of the authorities to comply with two decisions of the Supreme Administrative Court annulling two permits for the construction of buildings near their property. They further complained under Article 6 § 1 about the length of civil proceedings the first applicant had instituted against their neighbour, whom they accused of trespassing upon their property, and also about the length of administrative proceedings concerning the demolition of the first applicant's house.

3. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 13 September 2001, the Court declared the application partly admissible.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 23 January 2003 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr M. APESSOS, Counsel, State Legal Council, *Agent*,
Mrs V. PELEKOU, Adviser, State Legal Council, *Counsel*;

(b) *for the applicants*
Mr S. TSAKYRAKIS, *Counsel*,
Mr N. HATZIS, *Adviser*.

The Court heard addresses by Mr Tsakyrakis and Mrs Pelekou.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants were born in 1921 and 1953 respectively and live in Munich. The first applicant is the second applicant's mother.

9. The applicants own real property in the south-eastern part of the Greek island of Tinos, where they spend part of their time. The first applicant is the co-owner of a house and a plot of land on the Ayia Kiriaki-Apokofto peninsula, which is adjacent to a swamp by the coast of Ayios Yiannis.

A. Proceedings before the Supreme Administrative Court concerning the redrawing of the boundaries of various settlements in south-east Tinos

10. On 4 December 1985 the prefect (νομάρχης) of Cyclades redrew the boundaries of the settlement (οικισμός) of Ayios Yiannis in the municipality of Dio Horia and of the settlements of Ayia Varvara, Ayios Sostis and Lautaris in the municipality of Triandaru (decision no. 9468/1985). On 6 May 1988 the prefect again redrew the boundaries of the settlements of Ayios Yiannis and Ayios Sostis (decision no. 2400/1988).

11. On 18 March 1993 the town-planning authority of Syros issued building permit no. 620 on the basis of the prefect's decision no. 9468/1985. Another permit (no. 298) had been issued on the same basis by the same authority in 1992.

12. On 21 July 1993 the applicants and the Greek Society for the Protection of the Environment and Cultural Heritage lodged an application for judicial review of the prefect's decisions nos. 9468/1985 and 2400/1988 and of building permit no. 620/1993 with the Supreme Administrative Court. On the same date a second application was lodged by the same persons for judicial review of the prefect's two decisions and of building permit no. 298/1992. The basic argument of the applicants before the Supreme Administrative Court was that the prefect's decisions, and consequently the building permits, were illegal because in the area concerned there was a swamp and Article 24 of the Greek Constitution, which protects the environment, provided that no settlement should be built in such a place.

13. On 10 July 1995 the Supreme Administrative Court considered that the applicants had *locus standi* because they owned property in the area concerned. The court held that it could not review the prefect's decision no. 9468/1985 directly because the application had not been lodged within the time-limit prescribed by law. However, it could review the two building permits issued on the basis of that decision and, in the context of this review, the court was obliged to examine the constitutionality of the prefect's decision. The decision was found to have violated Article 24 of the Constitution, which protects the environment, because the redrawing of the boundaries of the settlements put in jeopardy the swamp in Ayios Yiannis, an important natural habitat for various protected species (such as birds, fishes and sea-turtles). It followed that the building permits were also unlawful and had to be quashed. Moreover, the court quashed the prefect's decision no. 2400/1988 because it had not been published in the Official Gazette in the manner prescribed by law (decisions nos. 3955/1995 and 3956/1995).

14. In 1996 the prefect issued two decisions (nos. DP2315/1996 and DP2316/1996) which excluded the contested buildings from demolition.

15. On 21 April 1997 a special committee of the Supreme Administrative Court found that the authorities had failed to comply with the above decisions. They had not demolished the two buildings constructed on the basis of permits nos. 620/1993 and 298/1992 and had continued issuing building permits in respect of the area that had been included in the settlements further to the unlawful redrawing of the boundaries (minutes no. 6/1997).

B. Civil proceedings against M.

16. On 31 January 1991 the first applicant and others instituted civil proceedings against a neighbour, M., in the Syros Court of First Instance (Πολυμελές Πρωτοδικείο). They claimed that he had unlawfully taken over part of their land in Ayios Yiannis. On 14 February 1992 the court found in favour of the plaintiffs.

17. On 30 March 1992 M. entered a caveat against this judgment (ανακοπή ερημοδικίας), which had been given in his absence. His application was rejected on 23 November 1992 (decision no. 138/1992). On 28 January 1993 M. appealed against that decision. The Aegean Court of Appeal (Εφετείο) reversed decision no. 138/1992 and sent the case back to the first-instance court (decision no. 120/1993).

18. A hearing took place on 14 January 1994. In a preliminary decision of 31 March 1994, the first-instance court ordered investigative measures. Witnesses were heard on 13 April 1995, 4 July 1995, 10 October 1995, 12 December 1995, 12 February 1996 and 2 April 1996.

19. Following an application by the first applicant on 15 March 1998, a hearing was set down for 11 December 1998. The hearing was finally held on 28 May 1999. On 21 June 1999 the first-instance court found in favour of the first applicant (decision no. 98ΤΠ/1999).

20. On 7 December 1999 M. appealed against that decision. The proceedings are currently pending before the Aegean Court of Appeal. The parties have not yet applied for a hearing to be fixed.

C. Threatened demolition of the applicants' house

21. On 23 June 1993 the applicants received a notice to the effect that their house in Ayia Kiriaki-Apokofto had been built without authorisation and should be demolished. The applicants appealed to the competent administrative board. Their appeal was rejected on 28 September 1994.

22. On 6 October 1994 they applied to the Supreme Administrative Court for judicial review of the decision of the administrative board. On a request by the applicants, the Supreme Administrative Court decided to suspend the demolition of the applicants' house (decision no. 790/1994).

23. At first, the hearing was set down for 28 November 1995 but it was repeatedly postponed.

24. In 1999 a new law (no. 2721/1999) changed the rules of jurisdiction and the case was referred to the Piraeus Court of Appeal, which heard the case on 27 June 2000. The proceedings are still pending.

II. RELEVANT DOMESTIC LAW

25. Article 108 of the Code of Civil Procedure reads as follows:

> "The parties shall be responsible for taking procedural steps on their own initiative unless the law provides otherwise".

26. Sections 15 and 16 of Law no. 1337/1983 provide that the demolition of a building constructed on the basis of a building permit which has subsequently been revoked for any reason is to be suspended if the owner of the building acted in good faith.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION DUE TO THE NON-COMPLIANCE WITH THE JUDGMENTS PRONOUNCED

27. The applicants complained about the failure of the authorities to comply with decisions nos. 3955/1995 and 3956/1995 of the Supreme Administrative Court. They relied on Article 6 § 1 of the Convention which, insofar as relevant, provides:

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

28. The Government argued that the town-planning authority had taken all the necessary measures to comply with the decisions of the Supreme Administrative Court. In particular, it no longer applied the prefect's decision no. 2400/1988 and had carried out a land-planning study for the area. It was true that the prefect had issued two decisions (nos. DP2315/1996 and DP2316/1996) which excluded the contested buildings from demolition; in this connection the Government submitted that the demolition of the buildings in question was not the only possible way to comply with the decisions of the Supreme Administrative Court. On the contrary, it was admitted both by the relevant legislation and by the general principles of law that the demolition of a building was an extreme measure and had to be avoided, especially when the owner of the building had acted in good faith and had no reason to believe that the building permit on the basis of which construction had taken place would subsequently be annulled. Therefore, the Government concluded that the authorities had complied in substance with decisions nos. 3955/1995 and 3956/1995 of the Supreme Administrative Court.

29. The applicants contested the Government's allegation that the national authorities had complied in substance with the above-mentioned

decisions. They were surprised that the Greek Government regarded the exclusion of the contested buildings from demolition as compliance with the annulment of the building permits. They claimed that the only legal consequence of the annulment of the building permits was the demolition of the buildings constructed on the basis of these permits and noted that the Greek authorities had failed to demolish them.

30. The Court reiterates that, according to its established case-law, Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court; in this way it embodies the "right to a court", of which the right of access, namely the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6. Where administrative authorities refuse or fail to comply, or even delay doing so, the guarantees under Article 6 enjoyed by a litigant during the judicial phase of the proceedings are rendered devoid of purpose (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997–II, pp. 510-11, §§ 40-41).

31. In the present case the Court notes that a special committee of the Supreme Administrative Court found that the authorities had failed to comply with its decisions nos. 3955/1995 and 3956/1995. They had not demolished the two buildings constructed on the basis of permits nos. 620/1993 and 298/1992 and had continued issuing building permits in respect of the area that had been included in the settlements further to the unlawful redrawing of the boundaries.

32. Thus, by refraining for more than seven years from taking the necessary measures to comply with two final, enforceable judicial decisions in the present case the Greek authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect.

There has accordingly been a breach of that Article.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE LENGTH OF THE PROCEEDINGS

33. The applicants complained that the length of the proceedings instituted by the first applicant against M. and the proceedings concerning the demolition of their house had exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention.

34. In the Government's submission, the proceedings against M. had been protracted by the conduct of the parties. In particular, the Government noted that, in civil cases, it was for the parties to take the initiative to ensure that the proceedings progressed; they were, *inter alia*, responsible for

obtaining hearing dates. The Government claimed that the first applicant had not pursued her suit diligently.

35. The Government further argued that the applicants had failed to speed up the proceedings in connection with the threatened demolition of their house and had not asked for an expeditious hearing. In any event, they pointed out that the Supreme Administrative Court had decided to suspend the demolition of their house. Therefore, even if the proceedings were still pending, the applicants had rapidly enjoyed judicial protection of their rights.

36. The first applicant submitted in reply that, even if the parties were partly responsible for the delays, as the Government suggested, her case against M. was a routine property dispute concerning a small piece of land on a Greek island. There was no reason why it should have taken more than eight years for the first-instance court to reach a final decision.

37. As regards the proceedings in connection with the threatened demolition of their house, the applicants submitted that the problem did not stem from the scheduling of the hearings but from the successive adjournments, and that the failure to make an extraordinary request for expeditious scheduling could not explain the length of the proceedings. They further asserted that the suspension of the demolition was an interim measure and, as such, was far from constituting a resolution of the dispute. Moreover, it did not remedy the adverse consequences stemming from the threatened demolition.

A. Periods to be taken into consideration

38. The Court notes that the proceedings against M. started on 31 January 1991 and are still pending before the Aegean Court of Appeal. They have therefore lasted more than twelve years to date for two levels of jurisdiction.

39. As regards the proceedings in connection with the threatened demolition of the applicants' house, the Court notes that they started on 6 October 1994 and are still pending before the Piraeus Court of Appeal. They have therefore lasted more than eight years and three months to date for one level of jurisdiction.

B. Reasonableness of the length of the proceedings

40. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and with the help of the following criteria: the complexity of the case, the conduct of the parties, the conduct of the authorities dealing with the case and what was at stake for the applicant in the dispute (see, among

many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

41. The Court notes that the cases in question were not particularly complex and considers that the applicants could not be deemed responsible for the delays encountered in the handling of their cases. It points out that the Government did not supply any explanation for the overall duration of the proceedings, which seems manifestly excessive. Consequently, it appears to the Court that the length of the proceedings resulted mainly from the conduct of the relevant authorities.

42. The Court reiterates that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (*Frydlender v. France*, op. cit., § 45).

43. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court concludes that the length of the proceedings complained of was excessive and failed to satisfy the "reasonable time" requirement.

There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

44. The applicants contended that urban development in the south-eastern part of Tinos had led to the destruction of their physical environment and had affected their life. They relied on Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Arguments of the parties

1. The applicants

45. The applicants asserted that, regardless of the danger to one's health, the deterioration of the environment fell to be examined under Article 8 of the Convention where it adversely affected one's life. They agreed that Article 8 was not violated every time environmental deterioration occurred. They understood the importance of urban development and the economic interests associated with it. They also understood that States had discretion in making decisions about urban planning. On the other hand, the applicants

had no doubt that any State interference with the environment should strike a fair balance between the competing interests of the individuals and the community as a whole. In the present case the issue of the fair balance was rather simple. In its decisions nos. 3955/1995 and 3956/1995 the Supreme Administrative Court had itself tipped the balance in favour of the swamp and against urban development. Consequently, the Greek authorities were obliged to abide by their own choice. However, in failing to comply with the above-mentioned decisions, they had allowed the destruction of the swamp.

46. In this respect, the applicants pointed out that the area had lost all of its scenic beauty and had changed profoundly in character from a natural habitat for wildlife to a tourist development. Part of the swamp had been reclaimed so as to create, in addition to the buildings, a car park and a road. There were noises and lights on all night and a great deal of environmental pollution from the activities of the firms in the vicinity. The applicants argued that they were under no obligation to tolerate this deterioration since it was the direct result of the State's illegal activity.

47. The applicants concluded that the State authorities had not only failed to fulfil their positive duty to take reasonable and appropriate measures to secure their rights under Article 8, but had also, by their own activity, illegally affected the enjoyment of these rights.

2. The Government

48. The Government submitted that the applicants' complaint mainly concerned the protection of the swamp. That and not the protection of their home or their private life was the reason why they had applied to the Supreme Administrative Court. There could therefore be no issue under Article 8, all the more so as the competent authorities had taken all appropriate measures to protect the environment in the area concerned.

49. Even assuming that Article 8 applied in the present case, the Government stressed that the applicants' house was the only one at the upper end of the peninsula and that the other buildings of the settlement were located a certain distance away from it. Thus, there could not possibly be any serious disturbance from the applicants' neighbours. In this connection, the Government expressed the view that what the applicants were really claiming was the right to be the only ones to possess a house in the area. That was not feasible. In any event, the Government considered that any nuisance that the applicants might have suffered on account of the construction of the new buildings and the general organisation of the social character of the region had to be tolerated as an inevitable and temporary consequence of the urban way of life.

50. The Government concluded that, had there been any interference with the applicants' rights guaranteed by paragraph 1 of Article 8, it was clearly justified under paragraph 2.

B. The Court's assessment

51. The Court notes that the applicants' complaint under Article 8 of the Convention may be regarded as comprising two distinct limbs. First, they complained that urban development had destroyed the swamp which was adjacent to their property and that the area where their home was had lost all of its scenic beauty. Second, they complained about the environmental pollution caused by the noises and night-lights emanating from the activities of the firms operating in the area.

52. With regard to the first limb of the applicants' complaint, the Court notes that according to its established case-law, severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health (see *Lopez Ostra v. Spain*, judgment of 9 December 1994, Series A no. 303-C, p. 54, § 51). Yet the crucial element which must be present in determining whether, in the circumstances of a case, environmental pollution has adversely affected one of the rights safeguarded by paragraph 1 of Article 8 is the existence of a harmful effect on a person's private or family sphere and not simply the general deterioration of the environment. Neither Article 8 nor any of the other Articles of the Convention are specifically designed to provide general protection of the environment as such; to that effect, other international instruments and domestic legislation are more pertinent in dealing with this particular aspect.

53. In the present case, even assuming that the environment has been severely damaged by the urban development of the area, the applicants have not brought forward any convincing arguments showing that the alleged damage to the birds and other protected species living in the swamp was of such a nature as to directly affect their own rights under Article 8 § 1 of the Convention. It might have been otherwise if, for instance, the environmental deterioration complained of had consisted in the destruction of a forest area in the vicinity of the applicants' house, a situation which could have affected more directly the applicants' own well-being. To conclude, the Court cannot accept that the interference with the conditions of animal life in the swamp constitutes an attack on the private or family life of the applicants.

54. As regards the second limb of the complaint, the Court is of the opinion that the disturbances coming from the applicants' neighbourhood as a result of the urban development of the area (noises, night-lights, etc.) have not reached a sufficient degree of seriousness to be taken into account for the purposes of Article 8.

55. Having regard to the foregoing, the Court considers that there is no lack of respect for the applicants' private and family life.

There has accordingly been no violation of Article 8.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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. Damage

57. The applicants sought compensation for non-pecuniary damage. The first applicant claimed 15,000,000 Greek drachmas (GRD) (44,020.54 euros (EUR)) and the second applicant claimed GRD 10,000,000 (EUR 29,347.03).

58. The Government considered that these claims were exaggerated. They maintained that any just satisfaction that might be awarded to the applicants should not exceed EUR 7,337.

59. The Court considers that the applicants must have suffered feelings of frustration, uncertainty and anxiety as a result of the violations of their rights under the Convention. Making an assessment on an equitable basis, it decides to award the first applicant EUR 20,000 and the second applicant EUR 10,000 for the non-pecuniary damage sustained.

B. Costs and expenses

60. The applicants claimed GRD 7,514,572 (EUR 22,053.04) for the proceedings before the domestic authorities. They broke that sum down as follows:

(i) GRD 73,080 for the proceedings concerning the redrawing of the boundaries of the swamp;

(ii) GRD 900,000 for the proceedings before the Supreme Administrative Court concerning the annulment of the building permits;

(iii) GRD 1,436,009 for the proceedings concerning the execution of judgments nos. 3955/1995 and 3956/1995;

(iv) GRD 967,700 for the proceedings against M.;

(v) GRD 2,402,491 for the proceedings concerning the threatened demolition of their house;

(vi) GRD 327,980 for expert opinions concerning the size of the swamp, the age of their house and the size of their property;

(vii) GRD 1,407,312 for travel expenses.

61. For the proceedings before the Court, for which they had received legal aid, the applicants sought EUR 21,939.53.

62. The Court, in accordance with its case-law, will consider whether the costs and expenses claimed were actually and necessarily incurred in order

to prevent or obtain redress for the matter found to constitute a violation of the Convention and were also reasonable as to quantum (see, among other authorities, *Wettstein v. Switzerland*, no. 33958/96, § 56, ECHR 2000-XII).

63. The Court considers that only part of the costs incurred before the domestic authorities were aimed at remedying the violations of Article 6 § 1 found in the present case. It further notes that the applicants received a total amount of EUR 920 under the Court's legal aid scheme and that they were only partly successful with their application. Making an assessment on an equitable basis, the Court awards the applicants jointly EUR 5,000, including value-added tax.

C. Default interest

64. 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

1. *Holds* unanimously that there has been a violation of Article 6 of the Convention due to the non-compliance with the judgments pronounced;

2. *Holds* unanimously that there has been a violation of Article 6 of the Convention as regards the length of the two sets of proceedings;

3. *Holds* by six votes to one that there has been no violation of Article 8 of the Convention;

4. *Holds* unanimously
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 20,000 (twenty thousand euros) to the first applicant in respect of non-pecuniary damage;
      (ii) EUR 10,000 (ten thousand euros) to the second applicant in respect of non-pecuniary damage;
      (iii) EUR 5,000 (five thousand euros), including value-added tax, to both applicants jointly in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 22 May 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN	Françoise TULKENS
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mr Zagrebelsky is annexed to this judgment.

F.T.
S.N.

PARTLY DISSENTING OPINION OF JUDGE ZAGREBELSKY

I voted against the majority's conclusion that there has been no violation of Article 8 of the Convention. With regret I could not follow the reasoning that convinced the majority of judges to exclude finding any violation of the applicants' private life.

There is no doubt that the environment is not protected as such by the Convention. But at the same time there is no doubt that a degradation of the environment could amount to a violation of a specific right recognised by the Convention (*Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, § 40; *López Ostra v. Spain* (judgment of 9 December 1994, Series A no. 303-C, § 51; *Guerra v. Italy*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, § 57).

In the present case it is clear that there was a deterioration in the quality of the environment in which the applicants' house was situated. In particular, it is indisputable that the new urban development has caused damage to the habitat of the fauna which made the swamp area next to the applicants' property near the coast of Ayios Yiannis, exceptionally interesting and agreeable.

In my view, it could hardly be said that the deterioration of the environment did not lead to a corresponding deterioration in the quality of the applicants' life, even without taking into account their special interest in the study of the swamp fauna.

It is obviously difficult to quantify the damage caused to the quality of the applicants' private and family life. But the issue here is whether or not there has been an interference, not how serious the interference was. Certainly we should exclude finding any interference with the applicants' rights if the deterioration concerned is so negligible as to be virtually non-existent. In my view, however, this was not the case. In paragraph 53 the majority accept by way of example that the destruction of a forest bordering the applicants' house could constitute direct interference with private and family life for the purposes of Article 8 of the Convention. I agree, but I see no major difference between the destruction of a forest and the destruction of the extraordinary swampy environment the applicants were able to enjoy near their house.

I am willing to admit that the interference in question was not major, but in my view it is impossible to say that there has been no interference at all. It is true that the importance of the quality of the environment and the growing awareness of that issue cannot lead the Court to go beyond the scope of the Convention. But these factors should induce it to recognise the growing importance of environmental deterioration on people's lives. Such an approach would be perfectly in line with the dynamic interpretation and

evolutionary updating of the Convention that the Court currently adopts in many fields.

Article 8 allows even serious and major interferences by the State with the right to private and family life. However, an interference will contravene Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 and is "necessary in a democratic society" in order to achieve them. In the present case, it is not necessary to examine whether the interference with the applicants' right was necessary and proportionate to the competing economic interests. Here the Court has only to ascertain that, as the Greek courts ruled, the interference was unlawful. Thus, the first and basic condition for the legitimacy of even a minor interference with private or family life has not been fulfilled.

Therefore, I think that the Court should have found a violation of Article 8 of the Convention.